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ABSTRACT

This book deals with the topic of young people in service. Based on the belief that young people can be engaged in many valuable community service activities with the energy and spontaneity that is unique to youth, this book attempts to provide information for organizations to implement risk management plans to protect these young people from accidents, unruly behavior, angry parents, accidental or intentional harm, and how to keep young people safe and out of trouble. This book has five chapters. Chapter 1 focuses on the risk-relevant characteristics of children and adolescents as well as the differences between managing risk for young people and adults. Chapter 2 presents a simplified discussion of general legal principles. Chapter 3 reviews general risk management strategies, describing the process and tools that may enable organizations to safeguard their volunteers and community. Chapter 4 offers a risk management discussion of specific laws and issues particularly pertinent to working with young people, such as child labor, transportation, substance abuse, and sex. Chapter 5 explores family service projects and cooperative service arrangements. Collectively, this book attempts to provide channels to significantly reduce the risks associated with young people in service. Contains 38 references and an index. (MOK)

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A Commitment to Safe Service Opportunities for Young People

Anna Seidman and John Patterson

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Nonprofit Risk Management Center

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Introduction: Young People In Service—A Serious Commitment

Young People in Service. What a great idea! It brings to mind images of industrious young people cleaning up a city park, playing with toddlers in a day care center, entertaining residents of an elderly care facility, participating in a recycling project and engaging in many other valuable service activities with the energy and spontaneity that is often unique to youth.

But is that the whole picture? What about accidents, unruly behavior, and angry parents? How do you keep young people safe and out of trouble? How do you protect the community you serve from accidental or intentional harm? How do you keep your organization out of court, with its assets intact? The simple answer to all these questions is *Risk Management*. Implementing a risk management plan is not difficult, but it does require a serious commitment to hard work, unpopular choices, and occasional disappointments.

If you are working with young people, you should resolve to do so safely, sanely and with serious consideration of the consequences of your actions. This book will help you to analyze your own organization's risk management strategies. It will guide you in developing a risk management plan that will prepare you to deal with most—if not all—of the issues associated with younger participants.

This book begins by focusing on the risk-relevant characteristics of children and adolescents to help you to understand the differences between managing risk for young people and for adults. The second chapter presents a simplified discussion of general legal principles that may govern your organization's responsibilities to and for your young participants. Chapter 3 reviews general risk management strategies, describing the process and tools that may enable your organization to safeguard your volunteers, your community and your organization. Chapter 4 offers a risk management discussion of specific laws and issues particularly pertinent to working with young people, such as child labor, transportation, substance abuse, and sex. Chapter 5 explores two service opportunities—family service projects and cooperative service arrangements—both of which frequently involve young participants. Collectively, these materials will help you to find ways to significantly reduce the risks associated with young people in service.

This book focuses on young people under the age of 18. Nevertheless, some of the information presented here extends equally well to young adults and, in many cases, to participants of all ages. Additionally, the vast majority of material presented here applies not only to "volunteers" and "participants," but to paid staff and employees as well.

This book suggests risk management strategies that will apply to young people who approach community service from a variety of sources. The largest number of young volunteers come from one of the following groups. They may participate:

- as individuals, independently offering service without the coordination of family unit, school, organization or other group;
- as a family member offering service as part of the family unit;
- as one of a group of young people organized as part of a church, synagogue or youth-oriented organization; or
- as a member of a class or school service program.

This book also offers assistance to the wide variety of organizations and programs that involve young participants. These materials offer suggestions for the service-learning program that centers its activities around the participation of young people as well as for the homeless shelter or nursing home that limits its use of young people to only specific, short-term projects. We have attempted to write these materials to provide information appropriate for use by any organization or program, from the most experienced to the one that has never before worked with young people.

It is not the purpose of this book to list the benefits of young people as volunteers. Many other documents extol the virtues of young people and provide numerous suggestions to best utilize the talents of these individuals. Instead, these materials focus on ways to make youth service opportunities less hazardous, both to the organization and to the participant.

Please recognize that this book is not intended to serve as a general risk management manual. It focuses on the legal, risk management and insurance questions that splecifically relate to young people serving as volunteers, interns, participants and corpsmembers. Readers who wish additional information on general risk management strategies may refer to ***No Surprises: Controlling Risks in Volunteer Programs*** by the Nonprofit Risk Management Center. (Please see back page for ordering information.)

Moreover, this text focuses on reducing risks involved with young people *while they perform community service*. Space limitations do not permit this text to address potential risks arising from other youth activities. Discussion of risks involved with young people as service recipients, as members of the community, and as trespassers on organization property were intentionally excluded as topics beyond the focus of this text.

This publication provides information only. It does not offer a warranty or guarantee of safety. Although sections of the book offer information about laws and court opinions in some jurisdictions, the materials may ***not*** substitute for legal advice. Laws vary significantly from state to state and apply differently to different organizations and activities. This book attempts to help you to ask the appropriate questions when you contact your organization's attorney or the state and/or federal governing offices that regulate your organization's activities.

The next few pages provide you with a reasonable and practical plan to help reduce the risks associated with young people in service. The components of the plan have been collected from risk management strategies tested and implemented by numerous youth-oriented service organizations. The plan, as a whole, provides a model for optimal risk management.

It may not be possible for all organizations to follow the recommendations as a whole, due to personnel and budgetary constraints. Keep in mind, however, that vir-

tually all accidents are preventable. The more closely your organization adheres to the risk management strategies provided here, the less likely it will be that your young participants or the community you serve will suffer injury, and the less likely it will be that your organization will be brought into litigation. The more corners you cut in your risk management plan, the greater your risk. If you find that you are unable to implement a significant number of the recommendations offered within this book, you may need to reconsider the merits of involving young people in your program or project. If the endeavor creates too much risk, then *abandon the activity*. Where appropriate, save the young people, the community and your organization from unnecessary and preventable harm.

Finally, this book aims to make you think. The close of each section of Chapter 4 offers a hypothetical case study, based upon the information presented in the section. These case studies are purposely drafted to require thought and discussion. Some have no single answer but provide alternatives for you to weigh and consider. The suggestions that follow these case studies are by no means the only methods by which to solve the problems, and are intended only as food for thought. Use these studies to encourage discussion among your personnel. They may enable you to develop procedures to handle situations that could threaten the safety and security of your participants, your organization and the community you serve.

Chapter 1: Risk Relevant Characteristics of Adolescents and Children

Children and adolescents are not little adults. They lack the legal status of those over the age of 18. In addition, they typically have not developed the physical and emotional maturity necessary to make crucial decisions or to protect themselves from harm. In the process of recognizing these differences, your organization can learn to identify areas that present particular hazards to your young participants. You can also develop ways to prevent injury and to avoid placements that present too great a risk to these young people.

In this section, we discuss characteristics of children and adolescents that your organization should consider when developing its volunteer programs. We separate children and adolescents into two separate categories and contrast the characteristics of these two groups as they impact on risk management considerations.

For the purposes of this book, the term *children* refers to school aged, preadolescent individuals generally ranging up to 11 years of age. The terms *adolescents* and *teenagers* refer to young people ages 12 through and including age 17. The term *young people* describes children and adolescents, as a group, who participate in community service activities.

Children

Every child, just like every adult, has unique abilities. When working with children in a volunteer service setting, you need to know that children vary considerably, even within the realms of "normal" development. Children also vary greatly in their reasoning and decision making abilities. They develop at different rates, and the older the children, the more variation there will be in their range of abilities. The capacity to recognize a hazardous situation and to handle an unexpected event or emergency will differ from child to child. Risk management for children must take into account their shorter attention spans, limited literacy skills, and immaturity.

To better understand the characteristics of children, consider a hypothetical class of third graders, who are about to embark upon a school field trip to a nearby construction site. Field trips, such as the one here, are beneficial, because younger children learn by seeing and doing as much if not more than by sitting in a classroom. These third graders are still mastering fundamental reading, writing and language skills.

Field trips such as the one to the construction site will help them to learn through examples and demonstrations.

On the way to the construction site, the third grade teacher, and the other adult chaperones who accompany the group, must aggressively supervise the class. Children in this age group are still rather naive and trusting, as many have spent most of their lives depending upon others to protect them from dangers of any kind. They have limited and unsophisticated appreciation of hazards imposed by the environment, traffic and society. As they walk down the neighborhood street toward the construction site, the adult supervisors must constantly look out for those who tend to run ahead as well as for those who straggle behind. Some can be easily distracted by a barking dog and will stray from the group. Others may stop to pick up pieces of glass or other dangerous materials to pocket as treasures.

These children are still learning their basic pedestrian and bicycle safety skills. They also need to develop personal safety skills, including ways to protect themselves from child abuse and to find help if they become lost.

The teacher adjusts the learning experience to accommodate the characteristics of this age group. She exercises greater supervision over this young group than she would over older children. On a field trip of this nature she arranges for additional adult supervision. She carefully selects an outing that will be interesting to the children; one involving movement, sound, color and action that will hold their attention for more than a few minutes. She teaches by offering brief talks about the site and equipment, purposely interrupting her descriptions with visual demonstrations. She uses visual aids to help maintain the children's interests, such as inviting each to try on a hard hat to demonstrate the need for safety around heavy machinery.

An organization that utilizes the services of children should make similar efforts to enable these young participants to serve. The adults who supervise children as volunteers should plan accordingly, and should learn to be flexible to accommodate the needs of this diverse group.

Training, for example, must be designed so that it will impart the necessary information to each child. Since younger children have relatively short attention spans, they will not be able to sit and concentrate through long safety lectures. Take this shorter attention span into account when you train, by dividing training into short sessions. Offer demonstrations and attempt role playing. Assign the children to smaller groups, and where necessary, take the time to provide individualized training and supervision.

Similarly, take the characteristics of children into account when you develop the service projects in which you place children. Many young children will not be able to carry out a task that requires a lengthy commitment. A child assigned to an excessively long assignment can become careless and inattentive. He or she may consequently become an unnecessary safety risk. To avoid this problem, choose tasks that will maintain the child's interest. Keep projects short with adequate supervision.

Adolescents

Adolescents are young people knocking on the door to adulthood. Each adolescent has unique interests, skills, judgments, strengths, and weaknesses. Each will develop

at his or her own pace. For example, two fourteen-year-old boys, born on the exact same date, can prove remarkably different in size and development. One may mature earlier, be six inches taller, and have a deepening voice, the start of facial hair and an overwhelming interest in sex. The other, who may be developing more slowly, still has the appearance of a child, including the gait and higher voice of preadolescents. He enjoys computer games more than kissing games. Both of these young men are within the realm of perfectly normal adolescent development.

Despite their differences, both of these young men are in a state of transition. They are learning and experimenting with new adult behaviors and with the new abilities and emotions that come with maturity. Adolescents can be tremendous assets to a volunteer effort. At the same time, they require understanding, patience and carefully developed risk management approaches geared to deal with the traits characteristic to the adolescent period.

Physical Development

In early adolescence, young people go through tremendous physical change. Their bodies, spurred by an increase in hormone levels, grow rapidly and transform into young adult bodies. The speed with which this growth occurs may lead to poor physical coordination and awkwardness that can persist until the adolescent learns to adjust to his or her new size and shape.

The appearance of secondary sexual characteristics causes some adolescents to be self-conscious. This is particularly true for those who begin adolescence much earlier or much later than their peers. Early or slow development may also cause some teens to become targets for ridicule from others. When this happens, it can become the cause of fights and/or emotional distress.

Intrapersonal Development

Adolescents are learning to manage their emotions and behaviors, a task made all the more difficult by surging hormones and new emotions. Some teens find it difficult to cope with or adapt to adversity. They may exaggerate the significance of unfavorable experiences. Some teenagers experience extreme mood shifts. Euphoria can quickly plummet to dejection and rise to euphoria again in a remarkably short period of time. Generally, moodiness and emotional conduct amount to nothing more than normal adolescent behavior.

Adults who supervise adolescents should avoid over-reacting to adolescent behavior. On the other hand, some behaviors may provide warning signs of emotional problems that require intervention. The table that follows illustrates some warning signs that can suggest emotional problems needing professional attention. Any single factor or even combination of factors need not constitute a serious problem. Each child and each situation deserves individual consideration. If problem behavior persists for several days, explore it more carefully and if necessary, consider intervention.

Perhaps one of the greatest challenges in dealing with adolescents is trying to interpret their behavior and to understand when a problem exists that requires adult intervention. In a limited number of instances, some of the behavioral extremes of adolescents are actually signs of a serious problem. In a small number of young people, depression can lead to suicide. Unfortunately, more than one-fourth of high school stu-

Behavioral Indicators of Depression, Stress, and Possible Drug Abuse

	Depression	Stress	Drug Abuse
Abandonment of goals and reduction of ambitions	X	X	X
Problems with concentration and memory	X	X	X
Overreacting, overly sensitive responses		X	X
Changes in speech patterns, including slang or profanity		X	X
Avoidance of eye contact		X	X
Wearing sunglasses unnecessarily			X
Dulled speech and expression	X		X
Eating extremes or unexplained weight loss	X	X	X
Withdrawal from school and family	X	X	X
Sudden constant runny nose			X
Physical symptoms such as red eyes, sores on nose or mouth, fatigue, drowsiness, loss or gain of appetite, or altered mood	X	X	X
Chronic lying		X	X
A drop in quality of school work and grades	X	X	X
Increased secretiveness			X
Changes in friendships	X	X	X
Neglect of personal appearance and hygiene	X	X	X
Disappearance of money and other valuables			X
Erratic mood changes, apathy and lethargy	X	X	X
Changes in behavior, including disruptive, delinquent behavior	X	X	X
Puncture marks on arms			X
Presence of drug paraphernalia, incense, room deodorizer, eyedropper bottles, or drugs			X

dents have given serious thought to suicide and 8% have actually attempted it.[1] Consequently, adults in charge of adolescents need to keep adolescent conduct in perspective while maintaining a concerned watch on the behavior of those under their supervision.

If one of your adolescent volunteers raises the issue of suicide, deal with the matter seriously, swiftly and discreetly. This young person may be asking for help. You should ordinarily inform the young person's parents and take advantage of the help available from your community's suicide hot line or mental health center.

Interpersonal Development

As part of developing a sense of their identity in the context of society, adolescents become more involved with their peer groups. They seek to assert independence from their parents and look to their peer group to set behavioral standards. Although they seek to distance themselves from their parents, they still need role models and adults who can offer non-threatening advice. Problems can arise when adolescents need adult help and do not want to ask for it, or when their peer group encourages violent or otherwise antisocial behavior.

Adolescents must learn to communicate and to solve problems without resorting to violence. This may be a hard skill for some adolescents to learn, particularly those who have experienced violence as the preferred way to resolve disagreements with others.

Behavioral Development

Adolescents are in the process of learning self-control and self-discipline. Some have more difficulty with this task. Some are apt to be impulsive and may make decisions based on the moment without considering the possible consequences to follow.

Teenagers must also learn to accept and

follow the rules promulgated by those in authority. Adolescents frequently challenge authority and the rules set by others. Do not expect young people to follow blindly. They should understand that when they violate the rules, they will be required to endure the consequences.

The Adolescent as a Whole

Adolescents learn and develop at different rates. They can be emotionally unstable. They can act impulsively. They differ from one another and even from themselves from moment to moment. In short, these young people often seem maddeningly unpredictable. The changes, shifts, and unpredictability of adolescence confound adults and require risk management strategies that differ from those used for children or adults.

A visit to a hypothetical group of high school students will help to illustrate some of the characteristics of teenagers. In one classroom, several 15 and 16-year-olds sit at their desks working at widely varying academic levels. Some are more attentive than others. A few squirm in their seats, repeatedly looking at the clock.

Many teenagers can sit for long periods at desks tackling complex subjects like geometry, computer science, biology, and poetry. Other teens show clear aptitudes for various vocations. Some work well with their hands or show interest in the way things work. Some appear clearly disinterested in everything that has to do with academics, and strain at their confinement within school walls. Many think only of dismissal when they can "hang out" with their friends, drive their cars, and make some spending money.

We leave the classroom and follow a group down to the cafeteria. Some split off into pairs. In their later teens, many adolescents spend more time with members of the opposite sex. Their peer groups begin to replace parents as the setter of norms. The attire worn by many of these teenagers shows that they often dress in the manner expected by their friends, and quite contrary to the wishes of their parents.

Some of the group heads for the bathrooms. In the rest rooms, several adolescents are smoking. Smoking on school grounds is illegal and can result in automatic suspension for these teenagers. Though they are aware of these facts, the teens have not fully thought out the consequences of getting caught.

An organization seeking the service of adolescent participants should take into account the characteristics of this age group. When working with adolescents, it is important to capitalize upon their individual interests. For example, those with academic interests can be assigned to tutoring duties. Place those who strain at academic requirements in positions requiring more physical participation, such as conservation projects or coaching a youth basketball team. Improper placement can lead to bore-

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dom and distraction, two elements that can cause carelessness, lack of commitment, and ultimately a potential injury.

Adult supervisors need to understand that teenagers (even some beyond the age of 18) have not fully developed the ability to evaluate situations and to make accurate judgments about risks. Teens tend to underestimate risks and overestimate their own abilities. As a result, they are often apt to accept a dare from a friend that can lead to dangerous risk-taking and illegal or self-destructive behavior. Some may try feats beyond their physical abilities without full appreciation of the danger. Adults working with this age group should nurture independence and at the same time set boundaries for acceptable behavior.

The Statistics

Adolescents need to experiment, to try adult behaviors and to challenge authority. Although most adolescent experimentation proves harmless, occasionally these activities lead to hazard for the teenager and/or for other members of the community. The following statistics, obtained in a 1993 study by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, reveal some of the areas in which adolescents tend to experiment.

- By the 12th grade, 67% of teenagers have had sexual intercourse, much without use of condoms, and many with several partners.
- By the 12th grade, 30% of students report the use of tobacco products.
- By the 12th grade, 87% of students have used alcohol.
- By the 12th grade, 40% of students report having used marijuana.
- Almost one in four high school students report having carried a weapon to school in the past month.

The suggestions and strategies in the following chapters will help your organization to plan for and to minimize the potential risk that may arise from such adolescent behaviors.

Endnotes

[1] Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents (Morris Green, ed. 1994).

Chapter 2: General Legal Principles Governing Interaction with Young People In Service

In order to properly develop your risk management strategies, you need to understand some of the laws and legal principles that govern your interaction with young people. Federal and state legislatures, administrative offices, and courts have recognized the potential vulnerabilities and immaturity of young people. Consequently, these governmental bodies have designed laws that protect young people from themselves and from others who might take advantage of them. These laws prohibit young people from engaging in certain types of activities, such as performing certain hazardous occupations, using drugs and alcohol, carrying weapons, and entering into contracts. Other laws impose duties upon adults to care for young people. These laws require adults to assume certain obligations and also to avoid certain forms of interaction with minors.

When your organization includes young people among its service personnel, it assumes certain obligations to and for these young people. The organization becomes responsible for the well-being and conduct of young volunteers while they are within the organization's authority and control. State and federal statutes, regulations and court decisions set most of the standards that determine the degree of responsibility an organization will bear.

Since laws vary from state to state, the following pages can give only a very general overview of what you can expect and an idea of the areas you should consider. Some court cases are cited as examples of the way that courts have approached and applied these legal principles. However, since courts in different jurisdictions differ in their opinions on the application of these principles, do not consider these answers to be dispositive on any issue. To be certain of your obligations to and for your young people, please consult legal authorities or counsel in your own state.

Your Organization's Legal Responsibility to Young People

By including young participants, your organization assumes a duty to exercise a reasonable degree of care to protect them from foreseeable harm. This may mean that you will need to assume a greater duty to protect your young participants than you will to safeguard your adult volunteers. You may, for example, be required to exercise greater supervision for young people than for adults. In addition, you may be required to conduct more intensive screening of those who supervise young people than of those who work with adults. The extent of your duty will depend upon the decisions of the legislatures and courts in the jurisdiction in which your organization operates. The degree of duty may also depend upon the age of the young people involved, upon

the nature of your custodial relationship with the young participants and upon other factors that may differ from state to state.

As a rule, the greater the degree of control you maintain over the activities of young people, the greater your duty to protect them from harm. This duty encompasses your need to provide a safe environment and safe materials. You must also select the correct tasks, conduct proper training, and designate adequate and appropriate adult supervisory personnel.

Schools as a Model

The legal duty of care may be best explored through a review of cases that discuss the duty of a school to its students. Numerous courts have evaluated the duty of a school to protect its students, but fewer courts have considered the duties of a service organization to its young volunteers. Therefore, school cases provide excellent examples for understanding the duty of care owed to young people. Even though a school's day-to-day custodial relationship with its pupils differs significantly from an organization's limited contacts with its participants, both schools and service organizations need to attend to similar issues. Both entities bear a duty to maintain safe premises, to provide adequate supervision and to assign safe adult supervisors. Currently, most jurisdictions hold schools to a duty to care for and to supervise children in a non-negligent manner. In essence, schools must fulfill a greater duty to care for children and adolescents than to care for adult personnel. The younger the child, the greater degree of responsibility expected of the school.[1]

As more and more courts explore the duty of care, the standard is becoming more and more demanding. The current, generally observed negligence standard evolved from the less demanding traditional view referred to as *in loco parentis*. Under this theory, schools were expected to assume the role of a parent in the degree of control they were permitted to exercise over their students. In addition, this legal principle held schools liable to students only for those injuries resulting from the school's willful and wanton misconduct.[2] A few jurisdictions may still apply the *in loco parentis* standard to cases involving schools and similar custodial entities. The U.S. Supreme Court recently ruled that public schools are no longer governed by this principle except when it comes to maintaining the habits and manners of civility necessary to create a proper environment for learning. The Supreme Court recognized the power of schools over students as "custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults."[3]

In most states today, schools are expected to exercise ordinary care to supervise minor children, to enforce rules and regulations necessary for their protection, to anticipate and forestall potentially harmful juvenile conduct,[4] and to respond to dangers and risks that can or should reasonably be anticipated and protected against.[5] Although the burden to act without negligence in the care and supervision of children may seem weighty, it is by no means absolute. Courts have explained that schools are *not* expected to serve as a guarantor of the safety of their charges.[6]

Supervision

Schools have a duty to reasonably supervise the conduct of students.[7] While supervision is an essential element of a school's duty to care for children, lack of supervi-

sion alone does not automatically prove negligence.[8] Supervision is a necessity, yet the correct level, type and intensity of supervision depends upon the age of the children and the activity. Even for kindergarten-age children, the degree of supervision varies with the activities in which they are engaged.[9] While high-school-age children may require less rigorous and intrusive oversight, they still require supervision. Individuals in this age group cannot always be expected to exhibit an adult level of discretion, judgment, and concern for the safety of themselves and others.[10] For most activities, there are no laws that set the standards or ratios for adequate supervision. (However, most states have enacted mandatory adult/child ratios for licensed day care facilities.) Each situation requires a separate analysis.

Protection from Criminal Acts

Schools are sometimes held responsible for injuries to students resulting from the criminal acts of other students, staff, or those outside school premises. In these cases, a school can be found liable for failing to take reasonable measures to prevent a foreseeable harm.[11] In some jurisdictions, foreseeability depends upon whether similar crimes have occurred on or near the school premises, placing the school on notice of a potential problem. In other jurisdictions, no similar prior crimes need be shown. Other factors, such as the layout of the school premises and/or the availability of locations inviting crime, are sufficient in some jurisdictions to place a school on notice of a potential problem.[12]

A Higher Standard to Care for Young People

Generally, schools must exercise a greater duty of care to their minor students than to their adult personnel. In some jurisdictions, courts may hold schools to this higher duty of care and supervision simply due to the unusual relationship that arises between school personnel and students. Young people spend the majority of their days on school premises. Teachers, who spend lengthy periods teaching, advising, and observing their pupils, are in a unique position to recognize behavioral warning signs. Whether a service organization working with young people will be held to the same higher standard will depend upon the judicial decisions of the jurisdiction where the organization operates.

Recently, courts in a few jurisdictions have in fact ruled that child-serving, non-school organizations owe a higher duty of care to young people than to their adult participants. Courts in Texas applied this higher standard to organizations like the Boys Club and Boy Scouts of America. These courts held that organizations whose primary functions were the care and education of children had a higher duty to exercise care in the selection of the individuals who would be working with the young.[13] An Illinois court attributed a similarly high standard of care for preserving the safety of young people to the president and manager of a children's baseball league.[14] This Illinois court explained:

> The fact that children are involved imposes on those in charge of their safety the obligation of exercising more vigilance and caution to reach a level of ordinary care, than might be sufficient with respect to an adult.[15]

In every jurisdiction, it is certain that courts will require service organizations to assume *some* level of responsibility in the care and custody of their young participants.

This responsibility must be carried out through techniques such as proper training, assignment to age-appropriate tasks, and adequate supervision. In order to best protect your young people from harm and your organization from potential liability, you should design a risk management strategy that follows the high standard of care generally imposed by courts upon schools and child-serving organizations.

Statutes of Limitation for Minors

Even in the presence of the highest degree of care, accidents can and do happen. If a young person is injured while performing service for your organization, he or she may choose to sue the organization for damages. The young volunteer may choose to wait to bring suit many years after the accident occurs. Although each state permits an adult injured party only a limited number of years (often referred to as the *limitations period*) after an incident to bring suit, many state laws relax these restrictions for minors. Most states permit young people extra time after an accident to bring suit against the individuals or entities responsible for the incident. Many states, such as California, New York, and Virginia, do not even commence the limitation period until the child reaches the age of 18. Thus, if a ten-year-old participant is injured during a park conservation project, he or she may be able to wait at least eight years (until he reaches age 18), if not longer, to file suit against your organization. Consequently, if an incident involving a young participant does occur, retain your documentation of the incident, as well as information pertaining to your insurance coverage, for as long as the laws in your jurisdiction give the minor the right to sue.

Your Organization's Responsibilities for the Acts of Young People

Your organization is not only responsible to protect your young participants, but also to protect others from their conduct. There are two different ways that an organization can be held liable for the acts of its personnel. First, the organization can be responsible for harm caused by young volunteers who are acting on behalf of the organization. Under this legal principle, the organization assumes responsibility whether or not the organization itself did anything wrong. Second, the organization can be found directly responsible for failing to take precautions to prevent a staff member from acting in such a manner as to cause injury to another. This alternative form of liability arises from the negligent conduct of the organization itself.

Indirect or Vicarious Liability

An organization assumes responsibility for the activities of its young volunteers that take place while these persons are acting on behalf of the organization. To act on behalf of the organization, or at least to be perceived as doing so, the young person need have no formal agreement with the organization, nor an expectation of payment for his or her service. The organization's liability for the conduct of those who act formally, informally or even ostensibly on its behalf is sometimes referred to as "vicarious liability." An organization is vicariously liable for the conduct of its staff or volunteers when all three of the following conditions apply.

1. A paid or unpaid individual acts on behalf of the organization with the organization's actual, implied or apparent authorization.
2. The organization has control or the right to control the behavior of the individual.

It is immaterial that the organization never actually exercises control over the person's actions, as long as the right to control exists.

3. The individual is acting within the scope of the directions given him by the service organization.[16]

(Example: Mai, a young volunteer, accidentally cuts her tutoring pupil with a pair of scissors while helping the pupil with an art project. The accident occurs during service time. Prior to the tutoring session, Mai's supervisor instructed her about the proper use of the scissors. The organization did not act negligently in any way, as it provided adequate supervision and instruction. Nevertheless, Mai is careless, and the accident occurs. Mai was acting on behalf of the organization at the time, within the scope of the directions given her by her supervisor. The organization had the right to control her activities. Consequently, the organization may be held vicariously liable for injuries that occur.)

Direct Liability

Alternatively, an organization can be held directly responsible for its own failure to prevent a member of its personnel from acting in a way that would injure another. The organization could, for example, be held directly responsible for failing to train one of its personnel to use equipment correctly, if and when a volunteer's improper use of the equipment causes injury to another.

(Example: Mai, the young volunteer from above, cuts her tutoring pupil with a sharp paper cutter. The accident occurs due to her supervisor's failure to instruct Mai in the proper use of the cutting device. With this set of facts, the organization would be held directly responsible for the incident, as it failed to properly train Mai.)

Direct responsibility can also result if an organization fails to take appropriate steps to screen and exclude a volunteer who poses a threat to other volunteers or to members of the service community.

(Example: Jack, a teenage volunteer, hits and injures one of his charges in the day care center in which he serves. The service organization that assigned Jack failed to talk to Jack's teachers before making the assignment. If asked, Jack's teachers would have told the organization about Jack's violent nature and about the numerous fights that Jack has picked with younger children in the school yard. The organization's failure to check into Jack's background, could render it directly responsible for the day care child's injuries.)

Further discussion of direct liability appears in this chapter in "Intentional Misconduct."

Tort Laws Applicable to the Relationships Between Service Organizations and Young People

In many cases, tort law will govern your duty to and for your young volunteers. Torts are private or civil wrongs or injuries, some of which arise from statute, and others simply from societal expectations for appropriate conduct between individuals. Tort law can be broken down into three distinct categories: negligence, strict liability and intentional misconduct.

Negligence

Most injuries result from some negligent act or negligent failure to act. Your organization bears responsibility for injuries caused by the negligence of your organization or by someone under its control. A successful claim of negligence requires the establishment of the following four elements.

a) **Duty:** A duty of care to the person harmed. The organization, for example, has a duty to exercise reasonable care in assigning projects, providing proper training and equipment, and exercising adequate supervision. *(Example: George, a young volunteer, cuts himself on a piece of glass while cleaning up a local park as part of his service. He was not wearing gloves at the time of the accident. George might be successful in his claim against your organization if he can establish that your organization had a duty to provide him with the gloves he needed to safely handle the discarded materials he was assigned to remove and that your organization failed to provide these gloves.)*

b) **Breach:** A failure by those responsible to fulfill the duty. A breach of the duty cannot take place unless the injury was one that the service organization could have reasonably foreseen. *(Example: If George cuts his hand because your organization failed in its duty to provide him with proper equipment, then George may have a successful claim against your organization. The result may be different if your organization provided adequately thick gloves, and George injures his hand on an unusually sharp object that unexpectedly cuts through the gloves. George's claim against your organization may not succeed if the injury did not result from any failure on your organization's part, and/or from a harm that could not be foreseen.)*

c) **Direct or proximate cause:** The injury must have been a result of the breach of duty. *(Example: George cuts himself on the leg, not by picking up glass, but instead by tripping over his own untied shoelace and falling on a jagged rock. In this case, he may have difficulty in proving his claim against your organization. Your organization's failure to provide gloves breached a duty to George, but the breach of the duty had nothing to do with the activity that caused his injury.)*

d) **Injury:** The injured party must show an actual harm as a result of the conduct. *(Example: George picks up a piece of glass, but is not cut by it, and later goes home to tell his parents, who are outraged by your organization's failure to equip him with gloves. Despite their anger, they could not pursue a claim against your organization, because their son suffered no actual harm from the experience.)*

In summary, to escape liability, your organization must assess the nature of the duties involved in the activities to which you assign your young people, and must then fulfill these duties in a non-negligent manner, designed to prevent foreseeable accidents.

Strict Liability

Strict liability, in contrast, imposes responsibility whether or not negligence has taken place. It arises when an organization has a duty to make an unsafe or ultrahazardous condition safe and to protect persons who may come into contact with the condition. Most strict liability is created by statute but it can also arise from injury due to hazardous or unusual activities, such as contact with dangerous animals or ultrahazardous materials. (*Example: In a state that considers the use of fireworks an ultrahazardous activity, an organization stages a Fourth of July fireworks production for its staff and volunteers. Through no negligence of the organization, one of the fireworks misfires and injures a young volunteer. The organization would be strictly liable for the injuries resulting from the ultrahazardous activity, even though no negligence contributed to the injury.*)

Intentional Misconduct

An organization that coordinates service activities becomes potentially responsible for the intentionally harmful acts of its young volunteers. It also bears responsibility for the intentional acts of its adult staff that pose a threat to young participants. As discussed above, an organization can be held responsible for the acts of its personnel either indirectly (vicariously) or directly.

Vicarious/Indirect Liability

Few courts have held organizations *vicariously* liable for the intentionally harmful acts of its staff. Ordinarily, if a volunteer intentionally hurts someone, the volunteer will bear sole responsibility for the harm. Liability rarely rests with the organization because few intentionally harmful activities fall within the scope of the duties that the volunteer is required to perform for the service organization.[17] A few courts have held to the contrary, and have found that the employment or volunteer situation at least afforded the employee or volunteer the unique opportunity to commit the intentional act. (*Example: A service organization places adolescent participants in charge of a group of unruly, at-risk children, and gives the young volunteers the authority to use whatever physical force necessary to discipline and control their charges. One of the children suffers injuries when an adolescent participant uses excessive force to make the child behave. The intentional act, in this case, would likely be considered within the volunteer's scope of duties for the organization. Consequently, the organization could be held vicariously liable for the child's injuries.*) To avoid this type of vicarious liability, an organization should clearly delineate the boundaries of acceptable conduct (*e.g., volunteers are not permitted to enforce discipline with physical force of any kind*). In addition, the organization should communicate these boundaries in a manner that each volunteer will understand.

Direct Liability

Alternatively, an organization can be held *directly* liable for failing to take some reasonable precaution that would have prevented a volunteer from committing some form of intentional misconduct. Thus, an organization can be held directly responsible to protect its young people from the intentionally harmful acts of members of the organization's staff and personnel. The organization has a duty to screen the individuals who will be working with or in close proximity to young people. It should make reasonable efforts to exclude those adults and young people who could pose a threat to both young volunteers and vulnerable members of the population served by the

organization. It is not uncommon for an organization or employer to be held liable for negligently or carelessly selecting staff who pose a threat to young people. This tort, commonly referred to as negligent hiring and retention, results if an employer or a service organization knew or should have known of an employee or volunteer's violent tendencies and failed to take the necessary action to reject or dismiss the individual. Although this doctrine is applied most frequently to the employer/employee relationship, it has been extended to service organization/volunteer relationships where the organization has a right to direct the duties of the volunteer, has an interest in the work to be accomplished, accepts direct or incidental benefit derived from the volunteer's work and has the right to fire or replace the volunteer.[18]

To best avoid liability for the conduct of your adult staff, you should make reasonable efforts to select personnel who will pose no heightened risk to the young people who serve. You should also monitor the behavior of your adult staff on an ongoing basis. You should make similar reasonable efforts to screen your young people to reduce the risk to your other young participants and to the vulnerable populations your organization may serve. States differ on their views of what constitutes a reasonable effort to screen potential employees and volunteers. States also differ in laws regarding the extent of your obligation to conduct background checks upon those who will be working with young people. Your organization's legal counsel would be the best source for information as to the impact of these laws on your organization's obligation and ability to screen.

Legal Status of Minors

In most states, individuals under the age of 18 are believed to lack the capacity to enter into a binding contract. Most courts view agreements entered into by minors as "voidable." In essence, a young person may legally enter into the agreement, but may also legally withdraw from that agreement at any time up until (and sometimes after) he or she reaches the age of majority. The voidable nature of these contracts will bear upon your organization's ability to require your young participants to sign waivers, releases and other such documents. This may also have an impact on the ability of young people to serve in any formal capacity on committees or corporate boards of your organization.

Statutory Duties

Not every breach of duty results in an injury. Some duties, imposed by law, when breached, result in fines and/or criminal penalties. When dealing with young people, an organization is required to meet statutory obligations, such as those that prohibit the organization from employing young people in certain hazardous jobs, that forbid the organization from selling alcohol to minors, that require the organization that operates a licensed day care facility to employ the requisite number of adult staff, and that require the organization's staff to report suspected child abuse. Additional examples of statutes that impose such duties appear in Chapter 4, "Approaching Specific Laws and Risks Involving Young People in Service."

Conclusion

In general, the legal principles discussed above should provide your organization with a very basic understanding of the issues courts review when weighing the liability of an organization to and for its young participants. Since the courts and legislatures in each state vary in their interpretation and application of these principles, you will need to consult with your organization's legal counsel to be certain about how these laws will apply to your service projects. Keep these principles in mind as you read Chapter 4, "Approaching Specific Laws and Risks Involving Young People in Service." These principles will bear on how you should approach more specific areas, such as child labor laws, transportation, consensual sex, weapons, and physical discipline.

Endnotes

[1]Baldwin v. Zoradi, 176 Cal. Rptr. 809, 813 (Cal.Ct. App.1981).

[2]Thompson v. Devlin, 754 P.2d 1003, 1008 (Wash. App. Ct. 1988).

[3]Veronia Sch. Dist. 47J v. Acton, 115 S. Ct. 2386 at 2391-92 (1995).

[4]Baldwin, 176 Cal. Rptr. at 813; Hoyem v. Manhattan Beach City Sch. Dist., 150 Cal. Rptr. 1 (1978).

[5]D.C. v. Doe, 524 A.2d 30, 32 (D.C. 1987).

[6]Hoyem, 150 Cal. Rptr. 1 (1978); D.C. v.Doe, 524 A.2d at 32; Patterson v. Orleans Sch. Bd., 461 So.2d 386, 387 (La.Ct. App. 1984).

[7]Dailey v. Los Angeles Unified Sch. Dist., 87 Cal. Rptr. 376, 379 (1970).

[8]James v. Charlotte Mecklenburg Bd. of Educ., 300 S.E.2d 21, 24-25 (N.C. 1983).

[9]Wetsel v. Indpendent Sch. Dist., 670 P.2d 986, 991 (Okla. 1983).

[10]Baldwin, 176 Cal. Rptr. at 813.

[11]Chavez v. Tolleson Elementary Sch. Dist., 595 P.2d 1017, 1022-23 (Ariz. Ct. App. 1979); D.C. v. Doe, 524 A.2d 30, 32 (D.C. 1987).

[12]McLeod v. Grant County Sch. Dist., 255 P.2d 360, 362-63 (Wash. 1953).

[13]Akins v. Estes, 888 S.W.2d 35 (Tex.Ct. App. 1994); Doe v. Boys Clubs of Greater Dallas, 868 S.W.2d 942 (Tex.Ct.App. 1994).

[14]Castro v. Chicago Park Dist., 533 N.E.2d 504, 507 (Ill. App. Ct. 1988).

[15]Castro, 533 N.E.2d at 507 (citing Stanley v. Board of Educ., 293 N.E.2d 417 (Ill. App. Ct. 1973)).

[16]Trinity Lutheran Church, Inc. v. Miller, 451 N.E.2d 1099 (Ind. Ct. App. 1983); Baxter v. Morningside, Inc., 521 P.2d 946 (Wash. Ct. App. 1974); Restatement (Second) of Agency sec. 225.

[17]Big Brother/Big Sister of Metro Atlanta, Inc. v. Terrell, 359 S.E.2d 241, 243 (Ga. Ct. App. 1987); Doe v. The Roman Catholic Church for the Archdiocese of New Orleans, 615 So.2d 410, 415-416 (La. Ct. App. 1993). *See also*, Alma W. v. Oakland Unified Sch. Dist., 176 Cal. Rptr. 287, 289-90 (Cal. Ct. App. 1981); Boykin v. District of Columbia, 484 A.2d 560 (D.C. 1984); Bozarth v. Harper Creek Bd. of Educ., 288 N.W.2d 424 (Mich. Ct. App. 1979).

[18]Doe v. Boys Clubs of Greater Dallas, 868 S.W.2d 942 (Tex. Ct. App. 1994).

Chapter 3: A General Risk Management Process for Dealing with Young People

An effective risk management strategy relies upon a structured process composed of the five following steps:

1. identify the risks;
2. assess the risks;
3. decide how to control the risks;
4. implement a strategy to avoid, reduce and deal with the risks; and
5. review and revise periodically and as needed.

Since this text is not intended as a general risk management guide, it will devote only a brief discussion to the creation and development of this process. A more detailed description of the risk management process can be found in ***No Surprises: Controlling Risks in Volunteer Programs,*** Nonprofit Risk Management Center, 1993. (Ordering information for this and other texts appears on the final page of this book.) The materials that follow will focus primarily on Step 3 of this process—"Deciding How to Control the Risks"—as this step applies to volunteer service involving young people.

Identify Risks

Young people can offer tremendous value to the organizations they serve. Nonetheless, their participation can introduce risks to the young people themselves, the organization and the service community. Many of the potential risks involved with the participation of young people are suggested in Chapters 1 and 2. To identify the potential risks, take into account the characteristics of the ages of the young people who will participate, as well as the legal duties imposed upon your organization to care for these young people. Review your premises, your location, your adult staff, and the activities in which your young people will participate, and make yourself of aware of the potential hazards that young volunteer participation can pose.

Assess Risks

Once you have identified your potential risks, you need to consciously categorize them. You will need to decide which your organization can tolerate; which require the purchase of insurance; which can be reduced or controlled; and which are simply too great to bear. You will need to assess the likelihood that each risk will occur and the

consequential severity of the potential loss. In making this assessment, you should consider the possible financial ramifications as well as the potential impact on your organization's mission and goodwill in the community.

Decide How to Control Risks

Four tools exist to enable you to control the risks you decide to assume. These tools are:

1. **Avoidance:** Choosing not to offer a service opportunity that presents too great a risk.
2. **Modification:** Adjusting your policies, plans and procedures to reduce the chance that harm will occur to the level where the impact and/or potential damage are acceptable for your organization.
3. **Transfer:** Shifting at least the financial aspect of the risk or harm through liability shields such as contractual agreements or insurance.
4. **Retention:** Accepting the risk and preparing for the consequences.

These tools are not mutually exclusive. In many instances two or more tools may be used together to manage potential risks. For example, your organization may control transportation risks with both **modification** and **transfer** tools. You can **modify** your policy and procedures to permit only licensed individuals over the age of 25 to transport young volunteers, and you can **transfer** risk by purchasing vehicle insurance to cover potential transportation-related injuries.

Most tools can be applied both to prevent accidental injury or damage and also to minimize any injury or damage in the event that an accident does occur. *(Example: A permission slip is sent home informing parents that children will be volunteering at an animal care facility. The permission slip asks parents to indicate whether or not their children are allergic to animals. The document will potentially prevent injury by informing the organization about those children whose health would suffer from being placed in close contact with the animals. In the event that a parent fails to indicate a known allergy and a child suffers an allergy attack when placed in close proximity to animals, the slip may provide the organization with a potential defense against claims brought by the parents.)*

While all four tools are essential to effective risk management, this book will focus primarily upon two of the four tools: modification and transfer. A more detailed discussion of the remaining tools may be found in ***No Surprises: Controlling Risks in Volunteer Programs.***

Modification

To use the modification tool, your organization will need to develop and/or adapt your 1) Policies, 2) Plans and 3) Procedures so that you can commit to and carry out effective risk management. You will need to start by adopting policies, both general and specific, that commit your organization to providing safe service opportunities for young people. You may then use these policies to review your activities and to develop a plan for dealing with situations that may or will arise that could pose a risk to your young people, your community or your organization. Finally, you can translate your analysis and planning into procedures that you intend your staff and volunteers to follow in order to avoid and to reduce risk.

Policy

Modification may begin with the decision to make risk management part of your organization's direction and/or mission. You can commence your risk management efforts by adding a policy to your organization's mission and goals that reflects your overall commitment. The simplest example is also the most general:

> "KIDS FOREVER" is committed to practicing effective risk management to protect the safety, dignity, and legal rights of our young people as well as our organization's human, financial and intangible assets.

Policy development applies both to general areas of program operation and to specific areas involving young people. Take drug and alcohol use by young people as an example. As with the general policy toward safety, begin by establishing a position on the subject of alcohol and drug use. The Oregon Youth Conservation Corps, for example, adopted the following policy that made drug and/or alcohol abuse a violation of disciplinary laws meriting termination or other disciplinary action:

> Use of narcotics or alcoholic beverages by a corps member at the work site is strictly forbidden; nor shall a participant be under the influence of such drugs while at work. Use of a prescription drug from a registered physician as prescribed for medical purposes shall not be considered a violation.

Plan

Once you have established your policies in accordance with your legal responsibilities, you will need to apply them to your daily operations. As you examine your organization's activities, you should question whether these activities can be accomplished in a manner that will carry out the provisions of your policies. For example, consider the following questions that must commonly be answered by any program that involves young people in service.

- How will you assess the needs for volunteer service and develop position descriptions appropriate for children and adolescent volunteers?
- How will you recruit, screen, select and train young volunteers?
- What kind of screening is appropriate for young volunteers?
- What kind of training is required for the positions in which young people are placed?
- Who will be responsible for supervising young volunteers?
- Do your insurance policies cover acts of children and adolescents who provide volunteer services?
- What kind of parental permission is necessary for children and adolescents who volunteer?

An organization that operates without regard to safety will answer these questions quite differently from an organization with a commitment to risk management. For example, although you may have several service positions that you could fill with young people, perhaps only a few involve tasks that the young applicants can safely accomplish. Or, although you may have a number of adult volunteers willing to supervise your young people, only one or two may have had any experience with children and/or adolescents.

Procedure

Once you have created your policies and have analyzed your service opportunities to recognize where risks arise, you can then establish procedures to carry out your commitment to safe service. Assume, for example, that you have established a policy prohibiting the use of drugs and alcohol by any young person volunteering in your organization. In addition, you have recognized that some of your participants may already be drug or alcohol users. Your next step should be to establish procedures that your adult staff should follow when and if they discover young people using drugs.

Some policies need to be enforced with sanctions. If so, clearly establish these sanctions to enable your staff to apply them consistently. Drug and alcohol use is but one example of an area where policies, plans and procedures may be combined to create effective risk management strategies. Reducing the risks of drug and alcohol abuse and other specific risk-related areas are addressed below in Chapter 4, "Approaching Specific Laws and Risks Involving Young People in Service."

Modification and Avoidance Strategies for Young People in Service

The remainder of this section discusses the ways to utilize modification and avoidance through policies, planning and procedures. These tools will enable your organization to reduce the chance that harm will occur to a level where the impact and/or potential damage will be acceptable for your organization. The next few pages will focus on several of the areas that may require modification or avoidance. These areas include position description, screening, placement, supervision, training, parent involvement and evaluation.

Developing Appropriate Service Assignments for Young People

Once you establish procedures and rules of conduct, you need to move on to develop service assignments appropriate for the physical and mental ages and abilities of your potential volunteers. It may, for example, be appropriate to create service opportunities in which 13-year-old adolescents provide math tutoring to elementary school students. It may be inappropriate to assign the same young people to a project that requires them to tutor math to prison inmate G. E. D. candidates. Service opportunities need to be consistent with the capabilities of the young people who will serve. State and federal child labor laws (available from your state and federal Departments of Labor) may prohibit you from involving young people in certain types of service activities. A more detailed discussion of the impact of child labor laws upon youth volunteer service participation appears in the "Child Labor Laws" section of Chapter 4.

Some service opportunities may be appropriate if they are modified to meet the needs and capabilities of the ages of the potential volunteers. Young people may need to perform some tasks differently from adult participants. *Children* may need to have a task broken down into individual components or into shorter time periods. For example, when using a child as an office messenger, you may need to have her return to the pick-up location after each delivery, rather than send her out to make a series of deliveries. By breaking the task into smaller components, it may take longer, but you may decrease the chance that the child will become confused or lost or will deliver items to the wrong location. Children should not be expected to work for periods longer

than 60–90 minutes and should complete their assignments during the daytime. *Adolescents* may be able to handle longer periods of time and later hours of service.

Drafting Position Descriptions

Once you have designed and/or selected the appropriate service assignments, you should next carefully craft position descriptions that effectively define and communicate the extent and limitations of the tasks to the volunteer, his or her parents and the community. Through careful and thorough drafting, avoid creating unreasonable expectations. Written descriptions should explicitly describe the limits and extent of the responsibilities expected of each young volunteer. Draft the description in a manner that the young people will comprehend, using language appropriate for the ages of the participants involved. Carefully describe the tasks, the location(s) where the service will be performed, and the qualifications of those who will supervise the service. The position description should not only describe what the young people are expected to do, but also activities that are prohibited or forbidden. *(Example: The position description for a Hospital Candy Striper program should state that the Candy Striper is to help patients by reading to them and writing letters for them. It should also state that the Candy Striper is never to give medication, redo bandages, or perform tasks of a medical nature.)* Position descriptions should state the obvious. What is apparent to an adult may not be as clear to a young person.

Perhaps all position descriptions designed for young people in service should bear the motto: "Never Assume. When in Doubt, Ask Questions!"

Screening

Screening describes the process by which an organization selects qualified and appropriate participants. An organization should screen both the young people and the adults who wish to work with them. Children and adolescents should be screened to exclude unqualified or unmotivated individuals. Screening also helps the organization to place a candidate in a position that matches his or her interests and talents. Screen adults to select individuals who pose no unacceptable risk to the young participants. Your ultimate goal, in screening young people and adults, is to find willing and capable participants who pose no threat to the others with whom they work. (For a more detailed discussion of the methods by which to adequately screen staff, please refer to ***Staff Screening Tool Kit: Keeping the Bad Apples Out of Your Organization,*** Nonprofit Risk Management Center, 1994. See last page of this book for ordering information.)

Screening Young People

At the outset of any interview or application process make clear that acceptance is not guaranteed. Do not leave young people or parents with the impression that a service placement will be given to all those who offer to volunteer. Unless you are clear in the beginning about the selectiveness of your organization, you may face the wrath, or the lawyer, of an irate parent.[1]

A basic screening process consists of at least four elements: 1) applications; 2) interviews; 3) reference checks, and 4) acceptance or rejection. In some cases, you may also wish to add additional elements, such as record checks, to your screening strategy.

- ***Applications.*** Prepare a written application that your young applicants will be able to complete. The application should ask the young person to provide data that will help you to evaluate his or her strengths and weaknesses, such as information about favorite subjects and/or grades, extracurricular activities and hobbies. The application may also ask the young person to describe his or her motivations for volunteering. By requiring your applicants to complete a simple application form without assistance, you may obtain a tool by which to evaluate the literacy level of the young people who apply.[3]

  Alternatively, written applications can discourage applicants with limited literacy skills. If your service opportunities do not require strong literacy skills, you may wish to design your application to provide alternatives for delivering information. Since many young people, regardless of age or grade, are uncomfortable with essay writing, you could give your applicants the option of putting down a few phrases or even single words that identify their motivations. You could even ask younger children to draw a picture of why they want to volunteer and then ask them to describe it to you.

- Applications are the appropriate place to ask your young applicants for the names of at least three references who can offer objective information about their character and work habits. The references should all be non-relatives. Some organizations require one of the references to be from the applicant's school. See "Reference Checks" below.

- ***Interviews.*** An interview is the first opportunity for young people and your organization to assess each other. The adult interviewer should design the interview to reflect the age of the applicant. For children, the interview should be short and should focus on only two or three topics. For example, the interviewer may want to know why the child has applied, if the child understands the nature of the commitment, and if the child has thought out the transportation requirements to and from the place of service.

  For adolescents, the session may more closely resemble a regular employment interview. The interviewer should seek to match the requirements of the positions being filled with the skills and interests of the applicants. The interviewer should capitalize upon any sophisticated skill levels in fields such as art, mechanics, computers, child care, or landscaping.

  Since parents play a pivotal role in the ability of minors to perform volunteer service, try to schedule a separate interview, (even by phone if necessary) with the parents of applicants of all ages. By speaking with you, the parents can learn about your organization and the duties their son or daughter will assume. By speaking with parents, you can learn more about the young people, their work habits, strengths and weaknesses, family situations, and other conditions that may require special attention or consideration. This is also your time to establish who will be responsible for the transportation needs of your young participants.

- ***Reference checks.*** Reference checks can prove valuable for even the youngest applicant. A child or adolescent who receives a good recommendation may be motivated to fulfill the expectations of the person who gave it. References may also provide a unique window to a young participant's personal history, including his

or her living conditions, family, economic background, and reputation in the community. Facts obtained from a reference can help you to understand your young people and to train, supervise and motivate them accordingly.

- ***Acceptance or rejection.*** Most of the applicants whom you screen will appear capable of performing some element of your service project. Some applicants will not have the skills or abilities to perform the service required. When this occurs, it may be necessary to take advantage of the **avoidance** tool. If it becomes necessary to reject an applicant, attempt to do so gently, quickly and courteously without giving any false expectations. Thank the applicant for his or her interest. Try to focus on the needs of the organization and not on the deficiencies of the young person. For example, you might say that your organization really needs someone who knows how to file alphabetically, or who can enter data into a computer. When it seems realistic, soften the blow by inviting the young person to reapply in the future or to consider a different position.

- ***Juvenile record checks.*** Depending upon the nature of the service your organization performs and the proximity your young people will have to members of vulnerable populations (small children, the sick, or the elderly), or to sensitive or confidential materials (financial records or patient medical files), you may wish the applicant to disclose whether or not he or she has a juvenile court record. In a majority of states, juvenile court records are not available to the public. On occasion, confidentiality laws may inhibit your ability to screen your volunteers. These confidentiality laws are designed to protect the young people.

  Exceptions to these laws do exist. In some states, a juvenile, or his parents or guardians, may issue you a release to allow you to gain access to these confidential documents. Louisiana, for example, allows individuals 17 years of age and older to provide a written waiver allowing the disclosure of their delinquency records. A number of states, such as Colorado, Illinois, and Iowa, allow the youth access to his or her own files. In many states, a court order is required to obtain a juvenile file.

  About half the states have enacted laws that specify certain crimes or cases for which juvenile records are open to the public. Crimes that become a matter of public record are typically violent or otherwise serious offenses for which the juvenile was adjudicated as an adult. Some states even allow certain minor offenses, such as traffic violations, to become a matter of public record.[3]

  In some states, your access to juvenile records may be completely denied. In this situation, it may be possible to ask the applicant to volunteer the information, or to ask references to discuss their common knowledge of the individual's criminal history. State law will govern your ability to make inquiries of this kind and will dictate your ability to draw adverse inferences from the information you learn. Be sure to familiarize yourself with the law of the state in which your organization operates before conducting these types of background investigations.

  Do not expect court officials, police, probation staff and/or school personnel who have obtained information through privileged legal channels to share this confidential information with you in response to your informal inquiries. Most states

will impose penalties upon any individual who illegally discloses confidential information concerning juvenile records.

A juvenile adjudication need not be the basis for automatic disqualification. If you choose to utilize the services of juvenile offenders, you may still wish to select only those individuals whose crimes do not relate to violence and who pose no risk to others. This, of course, is a matter that is up to the discretion of your organization alone. Keep in mind that it would not be unreasonable for a service organization to include young people who have previously been convicted of non-violent crimes. It is possible to assign certain participants to service projects that place them out of the reach of vulnerable populations, confidential records or other forms of temptation.

- ***Additional Screening Techniques.*** More aggressive screening techniques are required for those young volunteers you intend to place in close contact with members of vulnerable populations or within access to sensitive information. More intensive screening can include drug and/or psychological testing. For these procedures it will probably be necessary to have the permission of the young person and his or her parents. The laws in your state may restrict your use of these techniques and or your use of the information obtained. Consult your local authorities to ascertain the legality of more extensive screening techniques in your state. If the law prohibits your organization from conducting the level of investigation you deem necessary to ensure the safety of your service population, make the decision to avoid the project or to place your young volunteers in alternative service positions.

Screening Adults

Just as you screen your young people, you must assess the qualifications and background histories of your adult employee and volunteer personnel. Screen your adult staff to be certain that they are the appropriate individuals to be working in close proximity to young people. Screening should be based upon the specific responsibilities of the adult employee or volunteer. The screening process should include a written application, face-to-face interview, reference checks, and record checks, where permitted.

The nature and depth of your screening strategies may depend upon the laws of your state. These laws may either *permit, require* or *prohibit* you from obtaining background information about the personal, employment and criminal histories of those who apply. Federal and most state statutes *permit* organizations that provide care to children to screen their staffs using criminal history databases. Some states *require* that child care givers, including camp staffs, screen those who will work with young people.

Even if your state's laws exempt your organization from mandatory screening requirements, screening remains a critical tool for reducing incidents of child abuse. Once you establish the legal limits of your ability to screen, design a set procedure that falls within these limits and follow it religiously.

Placement

After you have developed your service opportunities and have screened your applicants, you are in a position to match the appropriate applicant with the task that he or she will be able to perform. Take advantage of the information you obtained through

the application process. A volunteer with below average grades who loves to fix things would be of more value fixing broken toys than tutoring math to second graders!

Supervision

Your next task is to provide adequate supervision for your work with young people. Improper or inadequate supervision can expose your young people to risk of injury and your organization to unnecessary litigation and expense. Before embarking upon any project, assess the level of supervision you can provide. Avoidance may be the only available risk management tool when you find your organization unable to assign a sufficient number of adult staff members (paid or volunteer), capable of providing the management, assistance and oversight necessary for the job.

Assess your supervision needs by analyzing the age of the young people involved and the nature of the project to be accomplished.

- ***Children***. Children require close and nearly constant supervision. They need to be protected from attempting to exceed their capabilities. For example, a child can learn to operate a copy machine. Nonetheless, not all responsibilities associated with copying are appropriate for a child. A small child could be physically incapable of lifting a case of paper. A child assigned to clear a paper jam could be burned while making contact with the adjacent heating element. Familiarize adult supervisors with the limitations of the children they attend and with the hazards of the task. Teach children to ask for help and to take advantage of the assistance of the adults in charge.
- ***Adolescents***. Adolescents require more supervision than most adults, but are capable of undertaking more complex tasks than children. Although adolescents may often be allowed to work without constant oversight, supervision is required at the beginning of the task and at periodic intervals. Before allowing an adolescent to perform any particular job, the supervisor should first make certain that the participant understands the assignment and that he or she can actually perform the task without assistance. Some adolescents are so capable that it is easy to forget that they are not adults and may lack some of the judgment that comes with age and experience. It would be unwise to assume that an adolescent who fails to ask questions is one who understands the project. Teenagers often wish to appear overly self-sufficient and independent and can be reluctant to betray this image. Try to provide assistance without undermining the confidence of your adolescent participants.

Training

Young people, just like their adult counterparts, need to be trained to perform service assignments correctly, safely and in accordance with your organization's policies. Proper training not only protects your young people from injury, but reduces the possibility that your young people will cause injury to members of the community that you serve.

Training for young people should be designed to communicate the material in a way that they will appreciate and understand. Modify your traditional training approaches to reach the younger audience. For children, the training sessions should be brief with a lot of demonstration, participation and repetition. Fun helps! Adolescents in most cases can tolerate longer training sessions, but will benefit greatly from participation through role playing and other interactive training techniques.

For some projects, appropriate training may be beyond the expertise of your organization. If, for example, you undertake a project in which your young people teach foster children to swim, you may need to engage the services of a certified water safety instructor to appropriately prepare your volunteers for the task. It will be your organization's responsibility to find the correct person to provide the training, to establish that it is geared to the ages of the young people involved, and to make sure that your young volunteers attend and receive the necessary instruction. Alternatively, if your organization places your young people in service in the project of another organization, the latter may dictate the nature of training required.

Appropriate training should enable the young volunteer not only to perform the required task, but to perform it safely. Teach young people when and how to use necessary equipment, protective clothing and devices. Teach them to appreciate the responsibility they are assuming to themselves, the organization and the community.

Instruct young people to handle commonly foreseen problems and emergencies. They should know who to contact, where to get help, and whether to administer first aid. Training can include role playing of difficult or emergency scenarios to familiarize young people with the appropriate procedures for handling a crisis. *(Example: Young people chosen to volunteer in an elderly care facility should be aware of how to handle a difficult patient or an emergency scenario. Training could consist of young people role playing as both volunteers and elderly patients in problematic situations. Ask volunteers to play out their roles in situations where a patient suddenly becomes ill or unresponsive, or where a patient is belligerent or refuses the services offered by the young volunteer.)*

Parents

When working with young people, your organization should maintain adequate contact with parents and guardians. Frequent contact with parents will usually benefit everyone. Parents who are apprised of potential risks and who give their permission for their child's activities are much less likely to sue your organization in the event of an accident involving the activity to which they gave their consent. In some jurisdictions the parents' signature on certain forms and agreements can bar the parents from bringing suit for their child's injuries.

If you do send home forms for signature or to inform parents of their child's activities or whereabouts, make sure to be clear, precise and thorough about the information you include. Anything in writing can potentially become a piece of evidence that could be used against your organization in the event of a lawsuit. Avoid being placed in the position of failing to carry out the representations made within the documents you send home with your young people.

Your organization's conversations with parents can provide you with helpful information about your young volunteers' abilities, limitations, and physical and emotional

problems. Parents who are made aware of their children's activities and who are asked to contribute tend to feel better toward the entity that cares for their children.

Once in a while, you may encounter "difficult" parents, including those who are disinterested and even those who are abusive or nasty to their children and to you. In these situations, it is best to maintain a professional demeanor and to avoid conflicts wherever possible. Even "difficult" parents should be kept apprised of their children's activities.

Parental involvement is necessary for young people of all ages. The younger the child, the more the parents should be involved. Even the parents of seventeen-year-olds should be consulted and informed before their child participates in most service activities. Appropriate consultation with parents reduces your organization's exposure to legal liability from certain types of activities. The following are examples of times that your organization should plan to contact the parents of participants.

- To interview the parents of the applicant during the screening process. See "Screening Young People," earlier in this chapter.
- To obtain signatures on parental permission forms authorizing the performance of service or participation in organizational activities, especially those that take place off-site.
- To check on the absence of a volunteer from a scheduled period of service.
- To express concerns about observed behaviors that could be indicative of drug abuse, suicidal tendencies, or other problems.
- To notify parents if their child has been injured.
- To notify parents if their child is terminated from the program.

The foregoing list is but the first step in developing healthy parental contact. You may supplement this list by contacting parents to inform them of their offspring's accomplishments, to provide them with progress reports, and to invite them to group events. Good community relations, especially with the community comprised of the parents of your volunteers, can be one of your most effective risk management tools.

Evaluation

As you work with young people, you will continue to learn about how they think, act and react to situations and emergencies. Periodically, mistakes will be made, both by young people and adult staff. Take advantage of these mistakes to learn how to avoid them in the future. Ignore the temptation to avoid embarrassment by sweeping errors under the carpet. The most embarrassing conduct comes from repeating a mistake that could have been prevented through discussion and modification of your policies, plans and procedures. You may find it helpful to hold regular meetings with your young people to discuss procedures, update safety and risk management training, strengthen areas of weakness, and obtain feedback. In addition, these meetings can provide opportunities for ongoing training, and for recognizing the contributions made by various participants, as well as for dialogue between the organization and its young volunteers.

Transfer Strategies for Young People in Service

In addition to utilizing the **modification** strategies discussed above, your organization should make every attempt to find the most effective **transfer** tools available for working with young people. These tools, often referred to as liability shields, attempt to shift responsibility from the organization to another person or entity. Accidents will happen even in the face of the most aggressive risk management strategy. Consequently, transfer tools may enable an organization to preserve its finances and good will in the community when unfortunate events occur. When dealing with young people, some liability shields offer more protection than others. The following pages review the potential alternatives and evaluate their effectiveness for dealing with young people.

Waivers, Exculpatory Agreements, Releases

Some organizations attempt to limit or eliminate their potential liability by requesting that their young people and parents/guardians sign agreements referred to as "waivers," "exculpatory agreements," or "releases." In these documents, the participant signs away his or her right to sue the organization in the event of injury or damage.

Courts in many jurisdictions reject the use of waivers and exculpatory agreements and consider them to be against public policy.[4] Courts particularly dislike agreements that seek to excuse negligent conduct as well as those that seek to excuse a duty owed to a minor.[5]

A small number of courts have upheld these agreements only where the document has specifically identified the parties' intent to excuse negligence. A few courts have upheld only those contracts that included the term "negligence" in the document itself.

Very few courts have made it easy for a party who presents a waiver in an attempt to avoid liability. Courts tend to strictly construe the wording of the document against the party seeking to be excused from liability.[6]

In most states, waivers and exculpatory agreements may not be used to shift responsibility for willful misconduct or gross negligence, or where the duty owed by one party to another is a public one.[7] Both parties must enter into the contract with equal bargaining power. Courts disfavor agreements that one party is forced to sign. The requirement to sign creates an unequal bargaining relationship between the parties. Because it is a contract, the court will look to see if each party received something of value in exchange for what they surrendered. A limited number of courts have considered the value of the right to participate adequate consideration for the release of the right to sue.

- ***Effectiveness for Young People.*** In many states, a minor's agreement not to sue will offer little protection in court. To enter into a contract, a party must have the legal capacity to bind him or herself. In most jurisdictions minors lack the capacity to enter into a binding contract. Any contract entered into by a minor is considered "voidable," a promise that the minor can disaffirm at any time either before they reach majority or shortly thereafter.[8] As a result, many jurisdictions hold that minors are incapable of signing away their rights to sue. In these states, it would be legally ineffective to ask individuals under the age of eighteen to sign waivers, since an injured minor can easily disaffirm the contract in order to bring suit.

- ***Effectiveness for Parents.*** A parent's signature on a covenant not to sue may not offer much additional help. Many jurisdictions will not permit a parent to waive the rights of his or her children. If and when a parent does enter into such an agreement, the minor is considered to have the right to disavow the parent's contract at the time he or she reaches majority.[9] There are, of course, exceptions to every rule. One California court, for example, upheld a release signed by both a minor and her parents that enabled the girl to participate in a school hypnotism show.[10]

  While the law generally prohibits parents from waiving the rights of their children, most states allow parents to release their own rights. Parents can, for example, waive their own entitlement to recover the expenses they are required to pay in the event that their child is injured.[11]

State law governs the validity of waivers, releases, exculpatory agreements and the like. Generally, such agreements will not protect your organization in the event of an injury sustained by one of your young volunteers. Consequently, it would be very unwise to rely on these documents for protection. However, since each state views the propriety of such agreements in a different light, please contact your organization's legal counsel before attempting to avoid liability through the use of any type of legal document. Have your attorney draft or at least review any such document to make sure that it thoroughly discusses the risk, and that it complies with the drafting requirements of your state.

Informed Consent Forms

Unlike waivers and releases, informed consent documents are generally upheld by courts. These documents do not attempt to excuse the organization from responsibility for its own negligence. Informed consent forms seek only to relieve the organization from liability for the inherent risks of the activity itself, and only for those risks about which the participant has been informed. These forms offer no protection for risks not clearly identified. An informed consent form must apprise the participant (and his or her parents/guardians) in detail of the specific risks involved in the activity he or she is about to perform. The participant and parents sign the document indicating that they have read *and understand* the risks involved and agree not to bring suit for any harm resulting from these risks. If the validity of the document is challenged, the court will strictly construe the language of the document against the entity seeking to use the form to avoid liability. Consequently, it is essential that the wording of the agreement clearly and specifically identify the exact risk involved.

(Example 1: Your organization arranges a project in which several of your young people take a group of hearing impaired children on a climbing expedition. You obtain an informed consent form from the parents of each participant that clearly details the inherently dangerous nature of the activity and the types of risk involved in the climb. Two of your young people are injured during the climb. Clara falls after she gets a poor foothold in the cliff side. Jamal breaks his leg when the rope he is using snaps. The faulty rope resulted from your organization's failure to properly inspect the climbing materials before embarking. In many jurisdictions, in Clara's case, the informed consent form may protect your organization from a claim filed by Clara's parents, since Clara's injuries resulted from the inherently dangerous nature of the activity. However, Jamal's parents could still have a right to sue despite signing the informed consent

form. His injury arose, not from the danger of the activity, but instead from your organization's negligent inspection of the equipment.)

(Example 2: Your organization assigns a group of young people to carry out a clean-up project in a city park. You request that participants and parents review and sign an informed consent document in which they affirm that they are aware of and assume the risks from contact with poison ivy and poison oak. One of your young people contracts a severe case of poison oak and another is injured when bitten by a snake. The former participant agreed to assume the risks of contact with poison oak and may be barred from suit for damages, but the latter may have still have a successful claim. The consent form he signed failed to inform him of the potential risks from snakes on the property and therefore he never gave his consent to being subjected to the risk.)

Remember that a minor's incapacity to enter into a binding agreement applies to informed consent documents as well. The minor's signature, in most, if not all states, will not bind the minor to an agreement not to sue. He or she retains the right to disaffirm the agreement, either during minority or shortly after reaching majority.

Permission Slips

Whether or not you choose to use any of the documents described above, you should make an effort to use permission slips for each trip or activity involving your young people. Permission slips should clearly define the activity. For example, if you are going to the zoo, the permission slip might need to include that the trip will include a visit to the animal petting area. Parents of children with animal allergies may need this additional information in order to make the appropriate decision as to whether to allow their children to make the trip.

These documents do not absolve you of any liability, but they do provide a form of protection. A permission slip, signed by a parent or guardian, indicates the parent's knowledge of and consent to his or her child participating in the activity. A parent who is aware of the nature of his child's activities and whereabouts may tend to feel more involved in the decision-making process. In the event of an accident, the well-informed parent may feel less comfortable about shifting the entire blame to your organization. Moreover, permission slips can block lawsuits based upon claims that your organization somehow infringed the parents' authority, control or custody over their child. For example, if a parent signs a permission slip, giving your organization the right to transport his or her child on a field trip to a neighboring state, the parent cannot later prevail with a kidnapping claim against you based on your taking the child on this trip.

Indemnification Agreements

Waivers, releases, exculpatory agreements and informed consent documents all provide only a limited form of protection. Each can only safeguard your organization from the claims of the individuals who sign the document. A parent cannot, for example, sign a release that prevents others from suing your organization in the event that their child inflicts injuries upon another. Indemnification agreements may offer a type of protection for this problem. One who signs an indemnification agreement with your organization agrees to assume financial responsibility (and legal defense where specified) for claims brought by others against your organization, for injuries arising

out of activities identified by the agreement. An indemnification agreement does not bar others from suing you. It merely shifts the financial burden when a claim is brought.

You may find indemnification agreements a useful tool in your arrangements with other service organizations. If you place your young people in projects run by other entities, you may be able to arrange for these other organizations to indemnify you against loss in the event that an accident occurs. Before entering into any indemnification agreement, be sure that the other party's insurance policy covers such a contract and that the other party has the funds to honor its promise to indemnify. Many insurance contracts do not cover claims based on contractual liability. Some state laws prohibit public entities from acting as indemnitors, even where the contract is insurable. An indemnification agreement is useless if the signator lacks the resources or authority to cover your loss.

Insurance

A complete risk management strategy requires adequate insurance coverage.

Getting the right insurance generally requires collaboration between the person responsible for obtaining coverage and the director of your young volunteer program. The insurance purchaser should know the extent of your coverage as well as any exclusion that may apply to your young people. The administrator of the young volunteer program should be aware of the types of activities, risks and precautions involved in the projects. Together, these two individuals can work with your insurance agent or broker to obtain coverage for potential liability and injuries arising from the participation of young people.

In general, accident and liability policies make no distinction by age. Purchasing insurance for young people's activities differs little from purchasing the same type of insurance for adults.

Age does matter for some types of insurance. Most prominently, auto insurers are reluctant to insure young drivers. For example, many car leasing agreements will not cover drivers under the age of 21 or 25. "Commercial" auto and volunteer driver policies commonly carry similar exclusions for young drivers.

Although age-based exclusions are not common for other types of insurance, in some circumstances, an insurer may decline coverage because of concern about the safety of young participants in a program. While such treatment is not the norm, it can be a serious problem. If you are in doubt, you can work with your agent or broker to clarify coverage under your policies.

The following is a very general discussion of the types of insurance that your organization will need to cover the activities of your participants, both adult and minor. The following discussion highlights the key points regarding insurance for injuries to your young people and for damage they may cause.

- ***Injury to your young volunteers.*** Young people injured during service may need medical attention. If they are considered to be employees, expenses will ordinarily be paid by workers compensation. For volunteers, you can buy an Accident & Injury Policy that will pay for medical care required by anyone named under the policy. (The policy need not identify each child by name. Your young participants can be named and covered collectively.) Accident & Injury Policies typically are

"excess" policies that pay only amounts not covered by the injured individual's (or parent's) health insurance policy. These policies generally will not pay for lost wages, pain and suffering, or legal expenses. In most circumstances, the "medical payments" provision of a General Liability Policy provides similar coverage.

Injured individuals are often impressed by the goodwill of the organization that pays their medical expenses, and are less apt to sue when these expenses are paid. Nonetheless, an *Accident & Injury Policy* provides no guarantee against your young people bringing suit.

A General Liability Policy pays claims and provides legal defense against most types of suits brought against an organization, including those brought by the volunteers serving the organization. Your insurance company may deny coverage, however, if the individual who brings the suit is considered to be an "insured" under the policy, as explained below.

- ***Claims by others because of your young volunteers' actions.*** If one of your young participants accidentally injures a member of the community during a service assignment, coverage may be provided under one or more of several types of policies, including a General Liability Policy, a Volunteer Liability Policy and an Automobile Insurance Policy.

  A *General Liability Policy* will cover your organization for any claims brought *against the organization* arising out of the incident. This policy may or may not provide coverage for the individual. Coverage for the individual applies only to "named insureds." The standard *General Liability Policy* includes employees as named insureds but does not include volunteers, although they generally can be added. If you do decide to add your young people as named insureds in your *General Liability Policy*, make sure that you remain covered for any claims that your young people may bring against your organization.

  To provide volunteers with their own coverage, you can obtain a *Volunteer Liability Policy*. This policy assures volunteers of coverage regardless of the applicability or limits of the *General Liability Policy*.

  Coverage for injuries arising from motor vehicle accidents requires an auto insurance policy. Because automobile policies frequently contain exclusions relating to the age of the driver, you should verify your coverage if young people drive for your organization.

Implement the Risk Management Strategy

Once you have 1) created or modified your policy in a manner that commits your organization to risk management, 2) planned for potential situations, emergencies and/or incidents, and 3) developed procedures to provide your staff and volunteers with consistent rules for handling problems, you are now in a position to implement your strategy. Implementation requires that your personnel consistently practice your procedures in accordance with your policy. Violators should be well aware of the consequences of improper conduct and should never be surprised by the outcome of their actions. Emergencies should not be aggravated by indecision or a lack of set procedures to handle any reasonably expected eventuality.

Keep in mind that once you have established a policy, you have created your own obligation to enforce it. An unenforced policy is worse than no policy at all. It can result in liability in the event that a young person is injured by your organization's failure to follow the procedures established to carry out the policy.

Review and Revise the Risk Management Strategy

When you put your procedures into practice, you may learn that some procedures work better than others. You may also encounter situations for which you neglected to plan. If you periodically review your policies, plans and procedures and recognize your successes and failures, you will improve your risk management strategy and help it to meet the actual needs of your organization.

As you review and revise, try to involve your young people in the process. Young people may understand their peers better than any adult policy maker, board member, or perhaps even any psychologist. Some young people will have very good ideas and can bring a youthful perspective to a difficult task. By involving young people in the process, you can bolster their self-esteem and their interest in your projects. Moreover, young people who participate in creating the policies and procedures may be more likely to follow the rules and to help hold their peers accountable for their actions.

Endnotes

[1]Susan J. Ellis et al., Children as Volunteers (1991).

[2]*Id.*

[3]Howard N. Snyder, Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims: A National Report (1995).

[4]Doyle v. Bowdoin College, 403 A.2d 1206, 1207-08 (Me. 1976); Wagenblast v. Odessa Sch., 758 P.2d 968, 970 (Wash. 1988).

[5]Fedor v. Mauwehu Council, Boy Scouts of America, 143 A.2d 466 (Conn. Super. Ct. 1958).

[6]Doyle, 403 A.2d at 1207-08; Employers Liability Assurance Corp. v. Greenville Business Men's Ass'n., 224 A.2d 620, 623 (Pa. 1966).

[7]Childress v Madison County, 777 S.W.2d 1, 3-4 (Tenn. Ct. App. 1989).

[8]Hohe v. San Diego Unified Sch. Dist., 274 Cal.Rptr. 647, 649 (Cal. Ct. App. 1990); Y.W. v. National Super Markets, Inc., 876 S.W.2d 785, 787 (Mo. Ct. App. 1994).

[9]Sabourin v. LBC, Inc. 731 F. Supp. 1151, 1155 (D.R.I. 1990); Simmons v. Parkette Nat'l. Gymnastic Training Ctr., 670 F. Supp. 140, 142-43 (E.D. Pa. 1987); Apicella v. Valley Forge Military Academy and Junior College, 630 F. Supp. 20, 24 (E.D. Pa. 1985); Y.W. v. Nat'l Markets, Inc., 876 S.W.2d 785, 789 (Mo. Ct. App. 1994); Colfer v. Royal Globe Ins. Co., 519 A.2d 893, 894 (N.J. Super. Ct. App. Div. 1986) *But see*, Hohe, 274 Cal. Rptr. at 648.

[10]*Id.*

[11]Meyer v. Naperville Manner, Inc., 634 N.E.2d 411, 412 (Ill. App. Ct. 1994).

Chapter 4: Approaching Specific Laws and Risks Involving Young People in Service

The general materials presented in the previous chapters will guide you in developing the vast majority of your risk management plan. A few specific situations, often unique to young people, require some additional attention. These special topics are addressed below.

Child Labor Laws

Federal labor laws prohibit minors from engaging in certain types of employment activities. These laws also regulate the number of hours and times of day that a minor may work. Child labor provisions are designed to prevent employers from exploiting younger workers. They exist to keep minors away from particularly hazardous forms of employment, such as those that require the operation of power equipment, or those that involve potentially hazardous materials.Coal mining, logging and saw milling, exposure to radioactive substances, roofing operations, and excavation operations are all prohibited activities under federal child labor laws.

Federal laws speak directly to "employment" situations and do not specifically include or exclude volunteer service. Labor officials interpret these laws to apply only to "employment" and generally do not apply these restrictions to young people in volunteer service. Nonetheless, young people who receive no pay in exchange for their labor are not automatically exempt from federal child labor laws. For example, labor officials are inclined to doubt the volunteer status of young people placed in private, for-profit businesses. Young people serving nonprofit or charitable institutions may lose their volunteer status if they are performing services normally rendered by a paid employee, or if their service involves interstate commerce. *(Example: A group of young people assigned to the mail order catalogue division of a large service organization participate by filling, packaging and mailing out orders for numerous items bearing the organization's logo. Orders are sent out to individuals all over the country. Since the orders are sent into interstate commerce, the participation of these young people may be viewed as "employment" by federal labor officials. If so, the service organization will be required to follow all federal child labor provisions when dealing with these young people.)*

While federal law is silent with respect to "volunteer service," many states' laws are not. Some state laws expressly encompass or exclude volunteer opportunities. Washington state, for example, exempts student volunteers (who expect no compensation for services) from its child labor laws *only* if the students are performing their service

for educational, charitable, religious or nonprofit organizations.[1] Maryland excludes work performed by unpaid minor volunteers in charitable or not-for-profit organizations, *if* the minor has a parent or guardian's consent.[2]

Some state laws, like federal law, make no reference to volunteer projects. In these states, resolve such questions through discussion with state labor department personnel. Pennsylvania law, for example, offers no statutory volunteer exception to its child labor restrictions. The state Attorney General, however, has issued an opinion exempting clean-up activities performed by children as part of conservation projects in State Parks and Forests on the ground that such activities do not exploit the labor of young people for commercial or remuneration purposes. For additional information about the application of Pennsylvania law, you can contact your organization's attorney, and/or the Bureau of Labor Standards of the Pennsylvania Department of Labor and Industry.

A few states allow minors to perform volunteer work, but impose legal requirements upon either the minor or the organization accepting the service. New Hampshire, for example, requires that a service organization obtain a youth employment certificate from the school principal of every minor who volunteers with the organization for more than three calendar days.[3]

To make certain that your young people are providing service that conforms to the provisions of your state's child labor laws, consult with labor officials in your area to discuss the service opportunities you intend to offer. This precaution will not only protect your organization from violating child labor laws, but should help you to restrict your young participants' activities to those that will subject them to the least risk of harm.

Hypothetical Case Study—What Should You Do?

The County Park Authority has suffered serious budget cuts and is reducing their paid staff by forcing a number of long-term employees into early retirement. Your organization, and others, have been contacted by a Park Authority official who informs you that they are looking for young volunteers to offer service in their parks. They need volunteers to help out in children's theater programs, drive the park shuttle bus, sell candy and drinks at the concession stands, and perform building and grounds maintenance in the evenings after park visitors have left. Some, but not all of these positions were held by individuals who were recently forced to retire. Should you agree to place your volunteers there?

Discussion: This activity seems harmless until you examine some of the service opportunities. At the outset, recognize that the Park Authority appears to be attempting to replace their paid workers with your group of unpaid volunteers. This use of volunteers may be prohibited by the Fair Labor Standards Act. Before placing your participants, you should consult with the local office of the U.S. Department of Labor as well as your state labor department to obtain their opinion and/or approval of such work.

Additionally, allowing your participants to replace employees who were forced to retire may prove detrimental to your organization's reputation in the

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community. Before engaging in this project, make sure that it will not jeopardize your group's good standing.

Federal or state law may prohibit some of the work itself. Driving the park shuttle bus could constitute a violation of the child labor prohibition against employing minors in driving occupations. Night maintenance work could violate the curfew provisions of state and federal child labor statutes. Building maintenance work could also be a problem, as the labor statutes forbid young people from engaging in certain types of construction and roofing occupations.

Before allowing your young people to engage in these service opportunities, contact federal and state labor officials to be sure that such activities are permitted by law.

TRANSPORTATION

Transporting Children

Transportation is an essential element of working with young people. Children and adolescents must be able to get from home, school or other location to your service site and back again. The extent to which your organization assumes responsibility for the transportation needs of these young people will depend upon the location of your offices and service sites, the accessibility of public transportation, the extent to which parents will participate, and your willingness and ability to accept responsibility. When making transportation decisions, consider the following questions.

- Should your organization assume any responsibility for providing or obtaining transportation to and from the service location?
- Can your organization delegate to outside sources both the transportation of participants and the liability that accompanies it?
- What transportation-related risks are covered under your existing insurance and is the current coverage adequate for the youth program?

Transportation provides a particularly difficult risk management problem because of the numerous variables that must be controlled. If an organization assumes responsibility for getting young people to and from the project site, it automatically assumes the responsibility of performing this job safely. The difficulty arises from the number of different drivers and vehicles whose safety must be controlled. If an accident occurs while young people are being transported in a vehicle owned by the organization, or operated on the organization's behalf, the consequences of the accident become the liability of the organization. To reduce the potential exposure to risk, an organization can attempt to shift transportation responsibilities to others, screen and train any individual who will be providing transportation on the organization's behalf, and obtain insurance adequate to cover any potential loss.

When implementing a transportation plan, you can start by seeking ways to transfer transportation responsibilities to someone other than your organization. The less your organization has to do with the means of transportation, the less likely it will bear liability in the event of an accident. Wherever possible, try to arrange to have young people's transportation assumed by some other responsible party, including

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parents, the school, or even the public transit system. But remember, once your organization exercises some degree of control over the situation—*e.g.*, selects the parents who drive, organizes the carpools, provides supervisors for public transportation trips—it then runs the risk of being found responsible for the safety of the young passengers. The following are suggestions to help you to find solutions that will remove or lessen your transportation responsibilities.

- ***Parents.*** Make it clear to young people and their parents that transportation to and from the job site is their responsibility. You may suggest that parents car-pool, but limit your involvement in forming the car-pools to providing participants with lists of the names and addresses of others participating.
- ***Public transportation.*** Many communities have safe, reliable public transportation systems. Where feasible, try to encourage your young people to take advantage of the transit system in your community for transportation to and from their assignments. Some younger volunteers may require adult accompaniment.
- ***Other sources.*** Try to negotiate a contract that allows you to use school buses provided by local school authorities. As an alternative, seek assistance from a nearby corporation, senior center, church or civic program that maintains its own fleet, or pool of willing drivers. These alternatives will not help your organization to avoid responsibility for the safety of the transportation unless the providers of the vehicles are willing to enter into an agreement in which they assume legal and financial responsibility for the young people they transport.

If you are unable to shift the burden of responsibility, then you need to take steps to ensure that you manage transportation safely. If you intend to use volunteer drivers, remember that your organization will be responsible for the conduct of these drivers if they are operating on your organization's behalf and if your organization has a right to control their actions. Be sure that those who volunteer to drive your young people are aware of their own potential liability. Recommend that they check with their private insurer to make sure that they have adequate coverage to deal with their volunteer driving responsibilities.

The following are additional suggestions to help you to safely transport participants of all ages.

- Be certain that your drivers are properly licensed for the vehicles they will drive.
- Make periodic license checks to be sure that license status has not changed.
- Verify that the vehicles used for transportation are sufficiently insured and that your transportation requirements comply with the policy in effect.

For additional assistance in reducing the risks involved with transportation of all participants, please refer to ***Avoiding A Crash Course: Auto Liability, Insurance and Safety for Nonprofits,*** Nonprofit Risk Management Center, 1995.

Children, as passengers, also require special risk management strategies. Children need to learn appropriate car behavior, safety rules and emergency procedures. In addition, adults in the car, whether as driver or passenger, must be prepared to enforce rules that will reduce driver distractions. Try to implement the following passenger safety suggestions.

- ***Non-driver supervisors.*** Passenger safety can be significantly enhanced when there

is an adult, other than the driver, available to maintain order and discipline in the vehicle. This person can be responsible for seeing that all passengers wear their seat belts. On longer trips, supervisors can occupy younger passengers with games and other quiet activities.

- ***Passenger safety.*** Train children in proper passenger behavior, including controlling noise levels, maintaining proper seating, and avoiding driver distractions. Instruct even the youngest passengers in emergency procedures. Establish and implement a safety belt usage policy. Build in disciplinary measures for those who fail to use their belts. Perform unannounced spot checks for seat belt use compliance. Give prizes for exemplary safety belt use, such as special ribbons, stickers, plaques or even special field trips.
- ***Emergency preparation.*** Keep copies of permission/treatment slips for the young passengers and a first aid kit in the vehicle in which children are being transported. Train drivers and/or adult supervisors to handle emergency evacuations and rudimentary first aid.

Adults who transport young people should avoid situations that pose particular hazards to young passengers. For example, drivers should avoid leaving young people unattended in a vehicle, even for a short period of time. Children are particularly vulnerable when left in a locked or unlocked car. They are potentially susceptible to abduction. In addition, children are more susceptible to the elements and can suffer serious injury from prolonged exposure to heat or cold that can be exacerbated in a car with closed doors and windows.

Adult drivers should also attempt to avoid situations where they are alone in a car with a single child. This common scenario results when an adult agrees to transport a group of young people to their homes, and is left alone in the car with the last child to be dropped off. This situation can lead to incidents and/or accusations of child molestation. To avoid this problem, adult drivers should arrange, wherever possible, to drop young people off in groups. Alternatively, assign an adult passenger to accompany adult drivers during transportation duties.

Finally, if your organization does assume the responsibility of transportation, be sure to designate the parameters of this obligation. If your organization agrees to transport young people to their homes, does this mean that your organization is responsible for making certain that the young person enters his or her home? If so, the driver should wait to see if his or her passenger actually walks into the house.

Hypothetical Case Study—What Should You Do?

You are driving your personal vehicle on a trip to the mall on a Sunday and find that you are stopped at a stoplight right next to the vehicle of one of your adult volunteers. She is the mother of two children and assists your organization by supervising the young participants' program. Her responsibilities include transporting young people to service projects in your organization's vehicles. You roll down your window and exchange greetings with her and her two kids. After you both pull away from the light, it occurs to you that neither she nor her two children were wearing their seat belts while you were conversing. What should you do?

Discussion: On one hand, this woman was in her own car on her own time. In this light, her personal conduct is irrelevant and has no bearing on how she handles her transportation duties for your organization. To alleviate your concern about how this reflects upon her adherence to safety standards during service time, you can ask personnel to perform spot checks on this woman to ascertain safety belt use.

On the other hand, this woman is a role model for the young people she drives. If she takes passenger safety for herself and her own children so lightly, is it likely that she will instill in your young people the proper attitude toward safety belt use? Moreover, what is to prevent her from removing her safety belt after she leaves your organization's premises? What will dissuade her from being lax about safety belt use for her passengers when they are away from the service location? To deal with these concerns, you could have a private talk with her to raise the issue of what you witnessed and to discuss your anxiety.

The two alternative solutions above may not protect you in the event that this woman is involved in an accident while transporting your volunteers, and one or more of the volunteers sustains an injury due to their failure to use a seat belt. Your knowledge of the problem and failure to take reasonable measures to prevent the foreseeable injury could subject your organization to liability for the injuries. To best avoid the risk of injury and liability, it may be necessary to solve this problem with a more extreme solution. The most aggressive approach would be to remove the adult volunteer's transportation responsibilities, not so much as a punishment, but simply as a means of protecting young passengers. While this may embarrass your adult volunteer, may spoil your friendship, and perhaps result in the woman's departure from your program, these consequences, while unfortunate, may be significantly less burdensome than the consequences of her being involved in an accident while transporting some of your young people.

Teenage Drivers

Transportation for adolescents provides a different set of concerns, generally because teens want to drive themselves. Frequently, they have licenses and access to a family car. Many young drivers cannot wait to get behind the wheel and will jump at every opportunity to transport themselves or others. Unfortunately, teenage enthusiasm is generally accompanied by inexperience. Often, young drivers are unprepared to react to an unexpected or emergency situation. This lack of experience can result in tragedy. Although teenage drivers accounted for 9% of the U.S. population in 1992, they accounted for 13% of all traffic fatalities.[4] More than one third of the deaths of 16- to 18-year-olds from all causes involve motor vehicles.[5]

In a perfect world, your organization could significantly reduce risk by prohibiting adolescents from driving for any service-related activity. Since this option may be unrealistic, the next best means of reducing risk is to develop and enforce strict rules for young driver safety. Some suggestions for reducing the risk of young driving are listed below.

- *Laws that restrict teenage driving.* Federal law prohibits the employment of mi-

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nors as regular drivers for the purpose of carrying goods or passengers. Incidental and occasional driving is permitted and other exceptions apply. Check with the laws in your state to determine whether motor vehicle operation is a restricted or prohibited occupation for young people who volunteer their services.

Many states have imposed curfews that prohibit young drivers from operating their vehicles during high risk nighttime and early morning hours. Be certain that you are not allowing any of your younger participants to drive either your vehicles or their own after legal hours.

- ***Night driving***. Even if your state is not one that prohibits night time teenage driving, your organization can enforce its own prohibition. Night driving may greatly increase the risk for teenagers. About half of the fatal crashes involving young people occur at night.[6] Keeping young people off the roads at night reduces the likelihood of an accident.

- ***Licensing verification***. Because most kids are eager to drive, they may try to do so, even though they do not yet have a license, possess only a permit, or have a restricted license. Avoid uncertainty by requiring drivers to present their valid driver's license. If it is restricted, (day time use, prescriptive lens use, etc.), insist that they comply with its limitations. Once you verify that your young driver is properly licensed, continue to verify his or her license at regular intervals.

  Several states require that individuals under the age of 18 must have completed or be enrolled in high school in order to obtain their licenses and may even authorize license suspension for people age 16-17 who drop out of high school. Consequently, if your organization has given a young participant permission to drive for service activities, and has reason to believe that this individual has subsequently dropped out of high school, you may wish to check with licensing authorities to determine whether he or she may still legally drive.

- ***Driving standards***. Set standards for drivers' records and check to see that all drivers meet them. Even if a young driver possesses a valid drivers license, his or her driving habits may not meet the standards you wish to enforce. Decide which types of violations will render a driver unqualified, such as driving under the influence, speeding, or reckless driving. Perform a driving record check on all your young drivers. Work with your insurance agent to obtain records. Disqualify any individual whose record does not meet the standards set by your insurance carrier and the safe driving policy established by your organization.

- ***Alcohol and driving***. Do not let any of your drivers, especially your inexperienced adolescent drivers, operate vehicles while under the influence of alcohol. All states have raised the legal drinking age to 21 and thirty-one states have established very low blood alcohol concentration limits for teenage drivers. Several states have enacted laws making it illegal for young drivers to have blood alcohol levels of anything over 0.0. In many of these states, teenagers can lose their licenses for as long as a year if they drink and drive. Even if your state does not have such a law, your organization can impose rules that deny driving privileges, or even the right to participate, for any young driver found in possession of or under the influence of alcohol.

  Regardless of laws against underage drinking, alcohol does manage to find its way

to social functions attended by young people. If your organization finds itself in a situation where a younger participant has helped himself to alcoholic beverages during an event you have sponsored, do not allow that person to drive. Several states will hold an organization strictly liable for providing intoxicating beverages to a minor who drinks, drives and injures.

- ***Teenage passengers.*** Teenagers riding with teenagers can greatly increase your driving risks. Two out of every three teens who died as a passenger in a 1993 vehicular accident were traveling in a vehicle driven by another teen, particularly a 16-year-old. You can significantly reduce the risk of injury to your young people and the potential liability of your organization if you impose rules that prohibit teenagers from riding as passengers in vehicles driven by those under the age of 18.
- ***Children as passengers.*** As passengers, children can be noisy or restless, and can require more supervision than adults. In short, they can be very distracting to the driver. It is therefore generally unwise to place children in a vehicle driven by a relatively inexperienced driver.
- ***Motorcycles.*** Although this relatively inexpensive and exciting mode of transportation is chosen by many young drivers, it also makes them more vulnerable in the event of an accident. In a perfect world, all young people would drive only HUMVEEs or at least Volvos. If your organization finds these standards a bit too difficult to implement, you can still prohibit the use of motorcycles and other vehicles that you deem unsafe.
- ***Seat belts.*** Young people tend to be extraordinarily lax about taking simple precautions to protect themselves from injury. Less than one fourth of eighth graders polled stated that they always wear seat belts.[7] Encourage the use of seat belts by implementing spot checks for seat belt use, providing awards for compliance and imposing disciplinary measures for failure to follow safety policies. Provide demonstrative evidence of the effectiveness of seat belts by conducting a field trip to a local emergency room, a talk by local police, or a demonstration of the "convincer" or other devices that simulate crash impacts of 5-10 miles per hour. Demonstrations may be available from your state or local police departments.
- ***Training techniques.*** Do not rely on traditional training methods to educate young drivers about the need for driving safety. According to the Insurance Institute for Highway Safety:

  "Strategies that rely on simply educating young drivers have not been very effective. Gaining skills in driver education or learning about the dangers of alcohol impaired driving doesn't always change attitudes or alter the risk-taking tendencies associated with immaturity. Generally speaking, the teenagers contributing most to the young driver problem are among the least likely to change because of education."[8]

Hypothetical Case Study—What Should You Do?

Your organization's youth in service program has agreed to accompany a group of inner city children to an outing at a farm approximately an hour outside of your city's limits. The outing will be accomplished in one day, and the group

will return to the city by 5:00 P.M. The children will be transported in vans driven by several of your staff members. You have enough licensed staff member drivers for all but one of the vans. You will need to utilize a volunteer to drive one group of children. One candidate is a 68-year-old woman who has been volunteering twice a week for the past five years. She drives her own car to and from the volunteer site, but has never driven a minivan. She has had cataract surgery in one eye and wears glasses. She is admittedly uncomfortable about driving after dark. Her driving record is spotless. She has no grandchildren and spends relatively little time with children. Your other choice is an enthusiastic 16-year-old who has had his license for 6 months. He regularly drives his parents' minivan and frequently transports his younger brother and friends to soccer practices and school. His vision is perfect and he has a spotless driving record. What would you do?

Discussion: This hypothetical places you in a no-win position, with the dilemma of choosing between the lesser of two risk-laden alternatives. Do not let yourself be boxed into this kind of corner. When forced to choose between two evils, choose neither. The solution that provides the least risk is not to select either driver. For obvious reasons, neither driver is the perfect person to place in charge of a van full of noisy kids. Despite their equally pristine driving records, each poses potential problems that could result from the unexpected. If, for example, some incident occurred that caused the trip to extend after dark, the 68-year-old would have difficulty with the task. The 16-year-old may be licensed, and insured in his own vehicle, but your organization's insurance policy may not cover him. If risk avoidance is your main priority, cancel the trip, see if the children can be placed in the other vehicles that are going, reduce the number of young people that can go on the trip, solicit parent volunteer drivers (after conducting the proper driver safety screening) to drive using their own vehicles, take a staff member away from other duties to drive, or find some other creative means that does not require placing children in a vehicle driven by someone who poses unnecessary risks.

One creative alternative, that does not eliminate but does reduce risk, involves placing both driving candidates together in the vehicle. The 68-year-old could drive, while the 16-year-old could keep the children occupied and control the noise and other distractions.

Alcohol and Drugs

Most young people will, at some time before they reach age 18, experiment with alcohol, drugs or both. This activity is not restricted to adolescents. Younger and younger children are succumbing to substance abuse. At a minimum, alcohol and drugs can hinder a young person's ability to perform service safely. These substances can cloud the young person's judgment and slow his or her reaction time. These characteristics can threaten the safety of the young people, their coworkers and your service community.

The use of alcohol is fairly common among adolescents. In a 1993 study of 14,000 young people conducted by the Centers for Disease Control, the vast majority (80.9%)

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of high school students reported having at least one drink of alcohol during their lifetime and nearly half (48.0%) reported having at least one alcoholic drink during the 30 days preceding the study. Marijuana, cocaine and steroid use were not nearly as common. One-third of the respondents reported one episode of marijuana smoking; one in twenty students reported using cocaine at least once and one in fifty students (nearly all boys) reported using steroids.[9]

Alcohol and drug abuse usually start before high school. According to a 1988 study conducted by the National Council on Alcohol and Drug Abuse, the average age for a boy to first experiment with drugs is eleven. The average age for girls is thirteen.[10]

In order to keep drugs and alcohol out your organization, you need to make clear to your young people that substance abuse is forbidden during service time. Adopting a "zero tolerance" alcohol and drug policy will only serve as the first step.

Despite the policy and in spite of all the laws that make it illegal to sell drugs or alcohol to underage individuals, a young person who truly wants these substances will know how to find them. Consequently, there is a reasonable chance that you may have to confront the problem of one or more of your young people under the influence of alcohol or other drugs. The following suggestions should help you develop a plan to deal with this predicament.

- ***Be prepared***. Every individual who works with you should understand from the outset of their service that the use of drugs and/or alcohol during service will result in appropriate penalties, such as dismissal from the program, a suspension, or at least a change in assignment. The Montana Conservation Corps (MCC), for example, designates illegal drug and alcohol abuse as one of the "seven sins." The MCC's Code of Conduct requires immediate suspension for any corps member who commits any one of these sins.

  Young people and the adults who work with them should also be made aware that, for the safety of the program, a reasonable suspicion of drug or alcohol use, even in the absence of absolute proof, may require you to temporarily suspend the suspected individual until the matter can be resolved. A note sent home requiring both parents and young volunteers to sign their acknowledgment of the policy can reinforce your organization's position in the event that the policy must be carried out. Those who have been forewarned will be less likely to challenge the fairness of the doctrine in the event that it must be applied to them.

- ***Warning signs***. Know what to look for. Drug use may be associated with certain warning signs. Refer to "Behavioral Indicators of Depression, Stress and Possible Drug Abuse," in Chapter 1 of this book.

- ***Legal authorities***. In some instances of drug or alcohol abuse, you may need outside help. If, for example, you observe one of your adolescent volunteers selling drugs to another participant, you may need to take immediate action to preserve the health and safety of your young people. In this case, you may need to bring in law enforcement officials to promptly deal with the matter. Advise your young people in advance of the possibility that you may contact the police. Your policy statement can inform your young people and their parents that the use and/or sale or supply of drugs and alcohol is prohibited and may result in the notification of legal authorities.

- ***Policy enforcement.*** Once you establish and communicate your intention to discharge any participant who appears to be under the influence of a controlled substance, you must implement the policy consistently. If you fail to enforce your organization's own code, you invite your young people to ignore your rules against drugs and all other prohibited conduct. Moreover, your acquiescence can legally be interpreted as a form of approval, rendering your organization open to liability for the harm that results.
- ***Consent to notify.*** At the outset of the service project, obtain both the parents' and young persons' written consent for you to notify the parents when and if you have a reasonable suspicion that a participant appears to be under the influence of or in possession of alcohol or drugs. Parents need to know if their children are using controlled substances. If you or anyone in your organization fails to inform the parents, your organization may be held liable for the consequent injuries. If the use of those substances leads to injury or death, the parents may have a cause for action against you or the organization.
- ***Cautious words.*** If you must notify parents of a potential problem, use caution in selecting the words you choose to describe the situation. Carefully chosen words will help to avoid a lawsuit in which you are charged with making libelous statements about the child. Focus on the symptoms and your concern for the health of the child, instead of the cause. Stress the conduct that you observed rather than your suspicions of potential drug or alcohol use. For example, tell parents that their child sleeps during service assignments, wears dark glasses, and/or sniffs a great deal. If it turns out that these symptoms are caused by hay fever and antihistamines rather than cocaine, you are less likely to be accused of defaming the young person's character.
- ***Inability to serve.*** When suspected substance abuse requires you to relieve a participant of his or her duties and responsibilities, focus not on the accusation but on the inability to perform. When you notify parents of their child's suspension, express your concerns about the child's safety. Explain that you fear that his or her drowsiness could lead to an accident. Tell them that you must suspend the young person's service until he or she is once again physically and emotionally capable of performing his or her duties without subjecting anyone to risk of injury.
- ***Confidentiality.*** Keep your suspicions between yourself and the parents. Do not discuss the child's potential drug or alcohol abuse with anyone, unless required by law, given permission by the parents, or dictated by the terms of your policy requiring notification of law enforcement.

Hypothetical Case Study—What Should You Do?

During the last two weeks, one of your most reliable young volunteers has been acting in an erratic manner. Normally prompt, Yelena has repeatedly shown up late for her service assignments. Her eyes and nose are red. She looks tired and periodically falls asleep at her station. She is irritable and has snapped more than once at her superiors. You have noticed her using nose spray when she believes no one is looking. You have also seen her at the water cooler taking pills. You have finally confronted her about her behavior and she

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explains that she has allergies to the pollen in the air, and that she is taking over-the-counter allergy medication that makes her drowsy and irritable. Her story seems quite logical and yet you are concerned. At present, one of her duties is to serve as a coach for a T-ball team sponsored by your organization. She insists that neither the allergies nor the medication will affect her ability to work with the children. In addition, she argues that by the time of the season opener, allergy season will be over and she will not need the medication. What should you do?

Discussion: In one respect, it matters little whether Yelena is using over the counter allergy medications or illegal substances. In either case, the medications (and perhaps the allergies themselves) are making her an inappropriate candidate for working with young children. Your best plan of action is to ask Yelena to take a leave of absence from service until she is no longer taking the substance. You need to contact Yelena's parents and explain that while Yelena is one of your finest participants, her safety and the safety of those with whom she works require that she temporarily discontinue her service until she no longer needs to rely on her allergy medication. Explain that you have seen her taking the medication and that it appears to be making her drowsy and irritable, conditions that could create hazards.

If Yelena is truly taking only allergy medications, she will be back to her service position soon. If she is abusing illegal substances, her parents will at least be alerted to the changes in her behavior and will hopefully take the necessary steps to intervene.

Weapons and Violence

Children and adolescents are exposed to enormous violence, both real and simulated. By the time an average child graduates from elementary school, he or she will have seen 100,000 acts of simulated violence on television. Children are also carrying weapons in increasing numbers. Conservative estimates based on the 1987 National Adolescent Student Health Survey indicate that as many as 90,000 to 100,000 students carry a gun to school every day.[11] Approximately 11,000 eighth and tenth grade students from 20 states were surveyed. Their responses revealed that:

- Forty-one percent of males and 24% of females stated that they could obtain a handgun if they wanted one.
- Twenty-three percent of the males said that they carried a knife to school at least once during the past year; seven percent said that they carry one to school daily.
- Three percent of males carried a handgun to school at least once during the school year. One percent stated that they carried a handgun to school daily.[12]

Throughout time, children have turned to forms of violence to resolve daily conflicts and turf wars. The violence has escalated. What used to involve a brawl and a black eye has evolved into a gun battle or knife fight. Children are no longer just getting bruised. They are killed in record numbers. Innocent bystanders are getting caught in the crossfire.

A new code of conduct has developed on the streets of most cities and more recently

in suburban and rural areas as well. Rival gangs issue rules, and use violence as punishment for the violation of these rules. Violence and the use of weapons are not restricted to gang use. Adolescents, whether or not members of gangs, seek respect from their peers and from adults. Young people feel compelled to counter disrespect, referred to as "dissing," with extreme forms of violence. Dissing incidents have led to teens killing other teens and adults.

Part of your duty to care for your young people may involve protecting them from violence. Beyond the obvious danger, you may be held liable for someone else's violent act. Without question, your organization has a duty to supervise the young people who participate and to protect them from certain harm. The duty to supervise does not necessarily require constant surveillance, or a system that will protect participants from every eventuality. The degree of supervision necessary depends upon the age of the children, the condition of the premises, and the occurrence of prior similar crimes on your premises and in your neighborhood. If a young person is injured in a violent attack during service time, the court will look to these factors to determine whether the criminal act was reasonably foreseeable, and whether your organization took adequate measures to prevent it.

The foreseeability of the crime presents the most difficult element to predict. What makes a crime foreseeable? Is there an age at which a child is too young to be expected to sexually assault another? Perhaps not. At least one court thought a jury should decide whether a school should have anticipated the sexual assault of a first grader by a fourth grader.[13]

What about prior conduct? What kind of previous activity should place adults on notice for the potential for a criminal act? If a child has a habit of generally unruly behavior, should the adults in charge of this child expect that he or she will commit sexual crimes against other young people? One Ohio court said no, and found prior, non-sexually-related unruly behavior of three male students insufficient to put a school on notice to guard against their subsequent sexual assault of another student.[14] A Florida court reached a very different conclusion. It held that prior incidents of sexual violence, or even violence of any kind, are not required to put a school on notice of potential sexual crimes. In this case, a student with disabilities was sexually assaulted by another student during a class attended by both. The court found that the school should have been aware that some young people left in large groups with inadequate supervision could be expected to commit sexual assaults on other students.[15]

Does a crime of the same nature have to take place on your property before you must anticipate future crime? One Washington state court said no. It found the mere presence of unlocked, secluded rooms, in the absence of adequate supervision, sufficient to leave to the jury the question of whether a school should have foreseen the sexual assault of one of their students by another.[16]

Your duty to protect your young people from violence may vary depending upon the jurisdiction in which your organization operates. Wherever your organization is located, you can best manage the risks from violence by committing your program to preserving the safety of your participants, and to reducing the legal exposure of your organization.

Take heart in the fact that the vast majority of people, both minor and adult, who

choose to volunteer are unlikely to be those who choose violence as a way of life. (This general principle may not hold true, however, if your organization is working with a court or judicial system to provide community service projects for young people with juvenile adjudications.) There are, however, exceptions to every rule. Your organization should prepare itself to deal with the unexpected violent tendencies of individuals within and without your organization.

To reduce the risk of violence, you need to recognize the warning signs. The following should help you to design policies that can help avoid violence.

Consider the location of your service site.

- How much crime takes place in your neighborhood?
- Is there sufficient lighting in the area around your building?
- Should participants be escorted to their transportation?
- Should they be allowed to participate after dark?
- Do gangs or gang members frequent the area around your premises?

Think about the inside of your premises.

- Are there isolated areas where assaults can occur unnoticed?
- Can you secure any area that could pose a hazard?
- Do you have sufficient personnel to supervise your young people?
- Do young participants need to be escorted when they go alone to rest rooms, or on other errands in your building?

Assess the nature of your participants.

- Do you have any unruly participants, or those with behavior problems?
- Do older children participate in the same areas as younger children?

A candid assessment of your physical plant and your personnel will help you to create a policy and plan to avoid foreseeable incidents. The following are suggestions for developing your policy and procedure.

- ***Non-violence policy***. Consider adopting a policy that prohibits violence, either one that forbids violence of any kind, or one that prohibits aggressive acts but allows room for self defense. Be prepared to enforce the policy you select. If, for example, you choose to adopt a policy that outlaws *all* forms of physical violence, be prepared to impose discipline even for acts not intended to cause harm. Follow the example of the Montana Conservation Corps, that requires immediate suspension for fights, carrying a weapon or horseplay. According to the MCC:

  "Warning! Horseplay is in a league of its own. Simply because one act of horseplay does not result in an injury, it is no less serious than if an injury does occur. Horseplay will not be tolerated."

  If, instead, you choose to adopt a policy that prohibits aggressive acts only, have a procedure ready to determine whether an act was taken in self defense.

- ***Gangs***. Be aware of youth gang presence in the vicinity of your organization. Youth gangs are generally considered to be composed primarily of adolescents and young adults who (a) interact frequently with one another; (b) are frequently and deliber-

ately involved in illegal activities; (c) share a common collective identity that is usually but not always, expressed through a gang name; and (d) typically express that identity by adopting certain symbols and/or claiming control over certain "turf."[17] If you are uncertain about gang presence, contact your local police for information. Look for signs of gang activity, such as graffiti, and especially crossed-out graffiti indicating the presence of more than one gang.

If your organization operates within gang territory, attempt to familiarize yourself with the gangs in your area. Understanding gang graffiti is especially important as graffiti can be a gang's method of communicating its intentions. To learn gang graffiti language, maintain a graffiti log book, as well as a glossary of unique gang terms and definitions. Ask the police or others who may be able to interpret whether the graffiti relates to gang conduct.

Try to learn the code of conduct shared by young people and to learn the warning signs for an outbreak of violence.

- ***Gang membership***. If possible, prepare yourself to deal with the possibility that members from rival gangs may become participants in your organization. Signs of gang membership include dress styles, tattoos, methods of grooming, color of clothing, hand signs, unexplained possession of money, and unusual nicknames. Gang members often carry beepers and/or pagers and use cellular phones. Weapons are also a potential sign of gang membership. Signs of gang membership can be very subtle, such as the wearing of red shoelaces, or very obvious, such as the carrying of a semiautomatic weapon. You may want to adopt policies that prohibit the wearing of gang identification during service hours.

  Remember that not only males become gang members; girls are joining gangs in record numbers. In addition, gang members are getting younger and younger. Young people between the ages of 10-13, although not necessarily official gang members, often dress in gang attire, spend time with gang members and write or draw gang graffiti.

  Do not hide from the problem. Ask young volunteers about their memberships in gangs or involvement in gang activities as part of the screening process. Their answers may surprise you. A young person's affiliation with a gang need not require automatic disqualification, but could provide an opportunity for you to review your policies concerning violence.

- ***Darkness.*** During hours of darkness, provide security escorts for volunteers to their automobiles or public transportation. Parking lots and isolated bus stops can be scary places as well as dangerous ones for young volunteers of both sexes. Providing escorts for volunteers as they leave your programs after dark can greatly increase their confidence as well as reduce the risk of sexual and other assaults. If necessary, create curfews, prohibiting participation by young people after dark.

- ***Isolated areas***. Close off and lock all isolated areas that can become the sites of criminal assaults. Try to eliminate areas where children can be taken or wander off unnoticed and out of the range of supervision.

- ***Adequate supervision***. Be sure that there are enough adults present to monitor your young participants. Never leave only one adult in charge. Make sure that an

additional adult is available in the event that one of the adults must leave the service site.

- *Law enforcement agencies.* Develop working relationships with your law enforcement and social services agencies. By initiating contact and developing a mutually acceptable plan for handling criminal activity, you are a giant step closer to being prepared to respond—if, or when, it becomes necessary.
- *Respect.* Treat your young volunteers with dignity and respect and insist that they treat each other with the same degree of courtesy. Young people need to learn that they can resolve disagreements without resorting to violent behavior. The first step may be learning mutual respect.
- *Weapons.* You should try to develop a plan to keep weapons off your premises. Unfortunately, in many states the laws in effect will do little to help you in this task. Few laws regulate minors' access to weapons. Only thirteen states and the District of Columbia have passed laws that directly prohibit all persons under the age of 21 from openly carrying handguns. Fifteen states limit possession or carrying of handguns by minors under 18, but allow open carrying of these weapons by those 18–20 years of age. Although many states limit the carrying of concealed weapons, twenty-two states permit the open carrying of handguns by some or all persons under the age of 18. There is no federal prohibition against minors openly carrying or possessing handguns.[18]

  If you cannot keep weapons out of young people's hands entirely, you can take steps that prevent them from bringing and concealing their weapons at the service location. For example, you could prohibit participants from bringing book bags or other luggage with them unless the bags are made of clear, plastic material. You could designate a locked area where all bags and coats are stored with access permitted only at the very beginning and very end of service.

Hypothetical Case Study—What Should You Do?

At a softball game between your young people and a team sponsored by another service organization, an altercation breaks out between one of your volunteers, Oliver, and one of the young people from the other group. As best you can surmise, the altercation was initiated by the volunteer from the other group. The code of conduct set by your organization prohibits any forms of physical violence, and mandates a one week suspension from service. Oliver and his parents argue that he had to use physical force to defend himself, and that had he not hit back, he would have suffered serious injury. What should you do?

Discussion: The policy that you have chosen presents a number of problems. It leaves no room for discretion. If you choose a strict policy of this nature, you must be prepared to enforce it. Enforcement means more than simply suspending a volunteer for violating the rules against violence. Before implementing such a policy, you need to plan for incidents that could invoke violence. For example, you should invest time in training your staff and volunteers in non-violent dispute resolution techniques. In addition, in a situation involving sports or other activities where excitement and competition

can lead to the flaring of tempers, you need to place an adequate number of supervisory personnel in the appropriate places where they can stop an altercation before it leads to physical violence. It may also be wise to confer with the leaders of the group or organization with whom you intend to interact. Be sure that their group of young volunteers observes a similar policy of nonviolence. If they do not, you may be wise to choose to avoid engaging them in sporting competitions.

If your policy does prohibit violence, then you must enforce it consistently. Oliver will have to endure a one week suspension. You will need to explain to Oliver and to his parents that the policy is in place for his health and safety, as well as for the health and safety of every other volunteer. Anger and disappointment may follow, but if you fail to carry out your own policy and procedures, you are inviting a potential lawsuit if another volunteer is injured in a physical altercation in the future. This incident gives you the opportunity to assess and review your policy and procedures, and where you feel it necessary, to modify these risk management tools.

Juvenile Offenders

Few children and adolescents are angels. A significant number of young people, especially teenagers, have been adjudicated of committing a juvenile offense. Many who have no juvenile record have also experimented with behavior that is against the law. If you compare two groups of otherwise similar kids, one group with juvenile records, and one without, you may discover that the main difference between them is that some got caught.[19] Most of the juvenile offenses committed by those with and without records are nonviolent and are more a form of experimentation than of crime, such as shoplifting, underage drinking, and marijuana use. Consequently, the risk of including young people with juvenile petty offense adjudications is often not much greater than the risk of involving young people with no record at all.

In designing your service projects for young people, you will need to make the initial decision about whether you will accept young people known to have juvenile records. If you do decide to include these individuals, you should adopt guidelines that will help you to screen applicants whose juvenile conduct makes them a risk that you are unable to manage adequately. You may, for example, need a policy that differentiates between kids with a history of minor offenses and those who have committed serious or violent offenses.

Screening through formal record checks may be difficult. As previously discussed, the laws of most states protect the confidentiality of most juvenile records. As a practical matter, you may have greater success obtaining information about the histories of serious or violent offenders from references and other informal contacts. Information about such offenses is often widely known and discussed in the community. Conversations with the young person, parents, and teachers can provide the information you need to make a sound decision about whether to accept the applicant and, if so, whether you need to provide additional safeguards. Before conducting these background checks, be sure to familiarize yourself with the laws in your state that govern your ability to

ask for sensitive information as well as your ability to act upon the information you obtain.

Wherever possible, conduct both a formal and informal background (adjudication history) check of any applicant you do not already know well. If you discover a record of delinquency, you need not assume that the individual in question is an unsuitable candidate for your program. To ascertain whether you can place this individual without significant risk, you need to learn more about the applicant and ask questions like: How serious was the offense? What were the circumstances? Has there been other misconduct?

Some organizations place juvenile offenders as part of special arrangements with the justice system. If your organization falls within this category, you may be able to enlist the help of the justice system to screen your young people. If possible, have justice officials refer only certain types of offenders, *e.g.*, only those who have committed non-violent crimes. By working with the probation department, even if you are prohibited from accessing the criminal records of your young people, you can still screen out those young people who do not meet your organization's criteria. If judicial officials refuse to screen the referral candidates or fail to fulfill their part of the agreement, you may need to reconsider your participation in the youth offender program.

If you have placed an individual who is still under the supervision of the juvenile justice system, try to take advantage of the wealth of expertise of probation/parole officers in your locality. If a probation or parole officer is responsible for monitoring the juvenile offender's compliance with the court's orders, then plan to keep the officer involved in the youth's activities. Wherever possible, involve the officer in your placement decisions and in any decision making that pertains to the juvenile. Work with the probation/parole office so that you and they are in agreement as to what is expected of your organization and what, if anything, your organization can expect from the court. For additional discussion about working in cooperative service relationships, refer to Chapter 5, "Service Scenarios Involving Young Participants."

If you decide to place young people with serious records or violent histories, be prepared to implement more aggressive risk management techniques to accommodate the greater risk involved. The presence of young people with violent backgrounds could be interpreted as creating a foreseeable risk of harm to others. Once the risk of harm is foreseeable, you can avoid liability only by taking reasonably adequate precautions to prevent the harm. You should reduce the opportunities for misconduct through increased supervision and removal of temptation. As an obvious example, if you have a participant with a past theft adjudication, avoid placing him where he would have unsupervised access to items of value. Similarly, when placing an individual with a history of drug abuse, keep her away from medications or large sums of cash or valuables.

Some young people with records of serious offenses may require one-on-one supervision. When this type of supervision is merited, it should take place in areas that are open and observable to other adult members of your organization. This type of high-level supervision will aid to limit opportunity for wrongdoing, protect the youth from abuse, and protect the adult supervisors from false allegations.

If you do include a participant with a criminal background, use extreme discretion in sharing this information with anyone else. Do not dwell on the fact that a young person came to your organization through a court referral, or that he or she may have a criminal conviction. To the extent possible, treat juvenile offenders the same as you treat other volunteers of the same age. Avoid the temptation to label this person.

In most situations, only staff who need to know should be aware of a juvenile offender's status. Neither the recipients of your service nor the young people in your program ordinarily need to know a juvenile offender's history. You can inform your young people, their parents, and your community of the general fact that you utilize the services of former juvenile offenders without identifying the offenders. If your knowledge of the offender's record came to you through your limited access to court records, accidental or intentional violation of the confidentiality of that information could result in civil or criminal penalties.

Finally, develop a policy to deal with participants who commit illegal acts or other wrongdoing while participating in your program. One method would be to develop an honor system by which young people themselves report their own crimes and those of their fellow participants. Make reporting a safety issue, and describe unreported wrongdoings as a potential danger to all participants. Certain types of offenses may require dismissal or at least an immediate suspension until the matter can be resolved. You may therefore need to review the procedure by which the participant may obtain reinstatement to the program.

Hypothetical Case Study—What Should You Do?

A long-time member approaches your church group and asks you to find a volunteer service placement for his adolescent son. He is worried about his son's future in light of the boy's troubled past. The boy's recent history is exemplary. He is a member of the debate team and plays clarinet in the school band. He has maintained a "B" average through all four years, and has been accepted to the state university. Two years before, he was adjudicated with two other high school friends of raping a high school freshman girl. He has shown no further violent tendencies and has since had no trouble with the law. You are troubled because one of your church's missions involves helping troubled youth. Nonetheless, the only positions you have available for placement are in a nursing home, a hospital children's ward, or a state mental institution. What should you do?

Discussion: A mission to serve troubled youth is admirable, but it can conflict with a goal to provide safe service to the community. Although the boy has shown no dangerous tendencies since the rape two years ago, you have no idea what prompted him to take the violent act, nor do you have any idea as to whether he has engaged in similar acts since, for which he has not been caught. Your main concern is that he has shown a tendency to commit acts of sexual violence. To place him with any of the populations in the service projects available could pose a serious risk to the people you serve and to your church reputation and assets.

To avoid all risk, choose not to place the boy. Contact some other organizations and see if they have an appropriate place for him.

If you feel you must place him, then find a job for him that will not place him together with a vulnerable population, including young people, the elderly or individuals with mental disabilities. Perhaps he can perform some jobs in the church itself, acting as a receptionist or janitor, stuffing envelopes, or coordinating service projects over the telephone. His assignment should be carefully selected and supervised. Be creative and look for options beyond the ones presented.

Consensual Sex

The media floods its juvenile audience with sex displayed in everything from music videos to blue jean commercials. Daily television talk shows have paraded a barrage of guests describing their experiences with a variety of deviant sexual behaviors. Young people, who are already curious about sex, may be led to believe that overt expressions of affection and/or sex are generally acceptable forms of public behavior. Their confusion can lead to conflict if your organization is not equipped to deal with the displays and potential consequences of the sexual interests of your younger participants.

Consensual sex can take place between two minors, both of whom are participants in your program, or between a minor and an adult volunteer or staff member. How you choose to address these various scenarios will depend to a certain extent on the ages of the young people and the specific situation encountered. Sexual curiosity is normal for all ages of children and can sometimes lead to exploration and experimentation. Overreacting to what may be considered "normal" behavior can be more damaging than the activity itself. Nonetheless, even normal behavior in an inappropriate setting can be troublesome and may need to be controlled.[20]

Your organization cannot control the social relationships of its volunteers when they are not engaged in service. You may, however, impose strict rules that permit no overt physical demonstrations of affection or sexual intimacy during service time or on service premises.

By eliminating demonstrations of affection during service time and on service premises, you may reduce your organization's potential exposure to legal liability. Consensual sexual activity involving minors who participate in your program *may* become your organization's legal responsibility, if the young people choose to interact during the time that they are under your organization's supervision and control. Consensual sex between minors, or even between minors and adults, is viewed differently by courts in different states. Some states hold that the minor's consent completely bars his or her right to sue his or her partner and/or the entity that allowed the activity to take place.[21] Other states take a completely opposite position by applying the rule that a minor is incapable of consenting to sexual interaction of any kind.[22] An Oregon court applied this premise when two scouting organizations were sued for negligently supervising a troop leader who engaged in sexual activities with a young scout. Although the boy gave his consent to the sex, the court held that organizations could not offer consent as a defense to their civil liability for the damages.[23] (Note also, that

states that view minors incapable of giving their consent also may require you to report incidents of consensual sex between minors as child abuse. See "Reporting Child Abuse" in this chapter.) Some states take a position somewhere in between, and apply consent to reduce the damages the injured party may recover.[24]

The effect of consent varies in some jurisdictions depending upon whether the sexual partner is an adult or a minor, and if a minor, the degree of age difference between the two participants. The way that the state in which your organization operates views consensual sex will bear upon your organization's liability if some of your young people engage in voluntary sexual relations. Some states will not hold you responsible for willing sexual activity regardless of the age difference between the two individuals involved. Other states consider *any* type of sexual activity between a minor and adult both in violation of criminal and civil law. A few states find consensual sex between minors permissible as if the minors are not far apart in age. The only way to understand your potential legal responsibility is to consult the law in your area.

The following are suggestions to help you avoid the potential difficulties arising from the voluntary sexual interactions between your participants and staff.

- ***Firm policies***. Your potential legal exposure will be less if you discourage if not prohibit any form of overt sexual demonstration during service hours and on service premises. Your organization should not assume that young volunteers will understand their behavioral boundaries unless you make them quite clear. During interviews, orientation and other training opportunities, confront these issues directly. The manner in which you present this topic should be designed to meet the age and maturity of the young participant.
- ***Set an example***. Your attitudes about appropriate behavior will be communicated to the young people in your program—they easily can spot hypocrisy. Telling off-color sexual jokes, treating people as sexual objects, commenting on physical attributes, and other demeaning, inappropriate and unprofessional behavior will cause you to lose the respect of your young people and will make it extremely difficult to enforce acceptable standards of behavior (and may make you subject to a sexual harassment suit).
- *No fraternization policy*. Consider adopting a "no fraternization" policy for your staff, or at least between staff and minor participants. Since this is a very sensitive topic, we suggest that you seek the advice of your legal counsel as you develop the approach your organization will take.

Hypothetical Case Study—What Should You Do?

Barry, one of your college-age supervisors, has been showing more than a passing interest in Alyssa, one of your high school age participants. It appears that both ignored your organization's "No Fraternization" policy. You confront Barry who admits being romantically involved with Alyssa. He attempts to dispel your worry by telling you that Alyssa's parents are aware that they are dating. To your dismay, Barry explains that the relationship started at your organization's national conference two months ago. At the conference, Barry was assigned to supervise and chaperone. Alyssa was attending as a delegate from your local division. You check with Keisha, who was supposed to have

been Alyssa's roommate at the convention. She reluctantly admits that Alyssa did not spend her nights in her assigned room. Both Barry and Alyssa defend their actions by stating that Alyssa will be 18 in two months and that they intend to marry during the summer. What, if anything, should you do? Would your position change if the relationship arose between individuals of the same sex?

Discussion: Despite their close ages, Barry is technically an adult and Alyssa still a minor. In a number of states, Barry and Alyssa's consensual sexual relationship constitutes sexual abuse, child abuse, and/or statutory rape. Depending upon the laws of your state, you may have a legal obligation to report your suspicions to the appropriate authorities.

Although Barry and Alyssa claim to have her parents' consent, you would be well advised to notify her parents of the situation. If you fail to notify the parents, and attempt to handle the matter yourselves, your organization could be sued for injuries that later occur that parental intervention could have prevented. Further, you have no way of knowing that Alyssa will always feel the same way she does today. If in one month the relationship dissolves, Alyssa may change her mind about the consensual nature of the relationship.

Unfortunately, the relationship appears to have commenced during a service related activity. Whether your organization could be held liable for any harmful consequences would depend upon the state in which you operate. The "No Fraternization" policy could work in your favor, but could cause more harm than good if you failed to institute the necessary safeguards to carry it out. In retrospect, was a male, 22-year-old chaperone the appropriate choice as supervisor for a group of teenage girls and boys? Some courts would easily find that Barry's sexual encounter with Alyssa had nothing to do with his duties on behalf of your organization. Other courts could possibly find that Barry's placement as supervisor/chaperone put him in the unique position to have the ability to become involved with the girl.

It might be wise to suspend Barry from his position, since he admittedly has violated your "No Fraternization" policy. At the very least, this would serve as a sign to other staff members that such conduct will not be tolerated in the future.

Finally, consider the possibility that a similar situation could arise between a staff member and young volunteer of the same sex. Your state law should govern whether or not you are required to notify legal authorities of homosexual consensual sexual activity. Again, if the activity involves a minor, the laws in your state may obligate you to bring the matter to the attention of the young person's parents or guardians as well as to Child Protection Authorities. This is a very sensitive issue and you may wish to seek guidance from local support groups to assist you in dealing with both the young person and his/her parents. Check with your organization's legal counsel to obtain additional information about the legal obligations imposed by statutory and case law in your state.

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Adult Staff, Volunteers and Members of the Community

Not all adults should work closely with children. Some adults are simply incapable of dealing with the problems and exuberance of youth and are therefore ill equipped to supervise the activities of young people. Some adults pose an even greater risk to young people. Those who will take the opportunities afforded by close proximity to young people to physically, mentally or sexually abuse young people must be kept away from your young volunteers. The Four "P's" of Organizational Child Abuse Prevention:—"Personnel," "Program," "Premises," and "Participants"—provide the key to protecting your young people and perhaps also younger members of your service community.

- ***Personnel***. Organizations need to use care in the selection, training, supervision and retention of the staff assigned to work with young people. Your organization should attempt to select staff that work effectively with young people, and who have no history of child abuse or other child victimization. (For a more detailed discussion of screening techniques, refer to the section on "Screening" in Chapter 3 of this book.) Once the adults are selected, they should be trained to understand their responsibilities and to be aware of the needs and characteristics of the young people they will supervise. Once they commence work, your organization will need to continually monitor their performance and to supervise their work with the young people. On occasion, it may be necessary to terminate a staff member who proves to be unsatisfactory in working with young people.

- ***Program***. To minimize risks, design your program or project so that individual adult supervisors are never left alone with an individual child or adolescent. Even private conversations that may need to take place out of earshot of others should remain in public view. Isolated contact between an adult and a young participant puts both at risk—the child for abuse and the adult for a false allegation.

  Design program activities to develop the self confidence of the young volunteers. Do not force or ridicule young people into participating in activities for which they are unprepared. Such psychological pressure can amount to a form of psychological abuse.

  Adult staff, young people and their parents should all be clearly informed of the nature of the activities and the scope of contact necessary between young people and staff. Adult supervisors should not exceed their supervisory responsibilities and should ordinarily be discouraged from spending non-service oriented personal time with the young people.

- ***Premises.*** Locations where young people perform service must provide ample security and safety. Hallways and parking lots should be adequately lighted to elimi-

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nate hiding places for potential assailants. Restrict access to locker rooms and shower facilities where young volunteers change clothes or shower to ensure safety and privacy.

- ***Participants.*** Organizations should establish procedures designed to create a personal shield of safety around each young volunteer. Policies regarding discipline, touching, and privacy should address possible sexual and physical abuse. Educational programs should empower young people to resist and report attempted or actual sexual abuse. Establish sign-in and sign-out procedures to enable your organization to know which young people are present. For younger children, these procedures should include identification and verification of the individual picking up the youngster at the completion of service for the day.

A full discussion of the *Four P's* is provided in the ***Child Abuse Prevention Primer for Your Organization,*** Nonprofit Risk Management Center, 1995. (See back page for ordering information.)

The following are some additional practical suggestions for avoiding abuse.

- ***Criminal conduct.*** Reduce your potential exposure by establishing and carrying out a policy making criminal conduct an offense punishable by termination and notification of legal authorities. Communicate this policy to your adult staff at the very outset of the application process. You can strengthen this strategy by making a point of discussing the laws pertaining to sexual abuse, assault and harassment during the orientation and training process. Make it clear that you do not expect your volunteers to engage in criminal conduct nor do you want them to become victims of such behavior.

- ***Report sexual abuse.*** Although your legal obligation to report sexual abuse will be controlled by your state's laws, a sensible strategy would involve the reporting to the proper authorities of any incident of suspected child abuse. Take seriously *any* allegation of abuse against one of your young people and report all allegations to the appropriate authorities. If you believe that a report is false, tell the person on the hotline why you believe the report to be false. Make the report to protect the child, yourself and your organization. You may be under a legal obligation to report suspected abuse. See "Reporting Child Abuse" in this chapter.

- ***Board representation.*** Consider inviting law enforcement or child and family services providers to serve on your board of directors. Having the right representative of your police department, other law enforcement or child protective services agency can provide you with a source of guidance in times of need. These individuals can also assist you to establish contacts and to develop cooperative procedures with legal and service agencies and can prepare you to deal with situations as they emerge.

The effectiveness of your risk management strategy for young people will rely heavily upon the quality of the adults you retain to work with these young people. These individuals will serve as supervisors, mentors, role models, confidants, teachers, referees, and in many other roles that will greatly affect the comfort and attitudes of your young volunteers. Make sure that the individuals you select for this job will perform it well and in a way that will pose no undue risk of harm to the young people or to your organization's financial standing or reputation in the community.

Hypothetical Case Study—What Should You Do?

Roscoe is 70 and has been volunteering for your organization for at least ten years. He is a gentle man, soft-spoken, a little shy, but eager to help. His hearing has been diminishing over the past two years. Instead of asking others to speak up, he has a habit of getting very close to the speaker in order to hear their voice.

Recently, a group of adolescents has been assigned to Roscoe's project of taping books for individuals with visual disabilities. On three separate occasions, a different girl has come to you with a complaint that Roscoe has come over very close to her to hear what she has to say, and while listening, has put his hand on some part of her body. Two of the girls said that Roscoe put his hand on their shoulder, but during the most recent complaint, the third girl stated that Roscoe put his hand on her breast. The three girls are friends, attend the same school, and usually arrive and leave your service location together. Their complaints represent the first and only problems anyone has ever raised about Roscoe's behavior. What should you do?

Discussion: If the girls' allegations are true, Roscoe's physical contact with at least one of the girls could be considered a form of sexual abuse, or at least a form of sexual harassment. You should check the laws of your state to determine whether you are required to report Roscoe's conduct as potential child abuse.

At the very least, his "touching" could be a warning of potential problems to come. Warnings are important, 1) because they give you an opportunity to prevent future incidents and 2) because if you fail to heed them and a subsequent injury occurs, the fact of the warning can serve as evidence of your negligence in handling the situation.

To heed the warning, remove either Roscoe or the girls from the project. Take extreme caution to avoid placing Roscoe in the position where he will have close contact with adolescent or younger girls. If necessary, place an adult supervisor in charge, to make sure that Roscoe is not allowed in a position where he could pose a threat to your young volunteers. Have a talk with Roscoe about the accusations. Show understanding, but explain to him that his actions can be misinterpreted and could cause problems for himself and for the organization. If you have not already done so, do a background check on Roscoe to determine whether there are any further indicators that would suggest that he poses a threat to your young people. Contact the parents of the girls involved and alert them to the issue, and assure them that you are taking action to rectify the situation.

Provide a training session for all personnel that deals with issues of appropriate physical contact and sexual harassment. Encourage anyone who feels that they have been the subject of improper physical contact to report the incident.

The underlying question remains: Did Roscoe intentionally touch these girls? If he made incidental contact, only to hear them better, then you are running the risk of unfairly branding Roscoe as a potential molester. If Roscoe is

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developing a problem and did intentionally touch these girls, then reassigning him or reassigning the girls may be insufficient to prevent a further, more serious incident. Under these circumstances, it may be necessary to discharge Roscoe from your program.

Reporting Child Abuse

Your duty to protect your younger participants may require you to notify legal authorities when you have a good faith suspicion that the young person is the victim of sexual or other forms of abuse. In states like Delaware, Florida, Georgia, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, Texas, Utah, and Wyoming, this duty extends to *any* person who has reasonable cause to know or suspect such abuse. States such as Arizona, California, Missouri, Pennsylvania, Tennessee, the Virgin Islands, and Virginia impose the duty upon individuals who are responsible for the care and custody of children. Most states impose severe penalties for failure to comply with these laws. Most states also provide the reporting party with civil and criminal immunity from liability for good faith reporting. In many states, the staff of a service organization will have a duty to report suspected abuse of a minor participant by an adult staff member or volunteer.

The duty to report sexual abuse does not apply only to contact between adults and minors, but to contact between minors as well. Only a few states, *e.g.*, Arizona and California, provide specific statutory exceptions for reporting consensual sexual activities between minors. Arizona requires no report for consensual sex involving minors age fourteen, fifteen, sixteen or seventeen. California requires no report for voluntary sexual conduct between minors under the age of 14 where both are of similar age.[25] Thus, in many states, the staff of a service organization will have a duty to report sexual activity between two or more minor participants.

If your organization operates in a state that requires you to report abuse to legal authorities, you must report any abuse, including that perpetrated on the child by his or her parents or any other adult, at home, at school, or in any location.

To fully understand your organization's responsibilities for reporting potential abuse you should contact your organization's attorney or the child protective services office.

Finally, keep in mind that liability can result if you fail to notify parents of sexual activity involving their child. A California court found school personnel liable for a rape that occurred after they failed to inform the victim's mother of prior abusive incidents perpetrated on her daughter by the rapist.[26]

Your duty to protect your young participants from sexual abuse may include reporting abuse to legal authorities. The following are suggestions of how to carry out this duty.

- ***Reporting statutes.*** Familiarize yourself with the law in your state that governs your duty to inform legal authorities and/or the parents or any child you suspect is the subject of abuse.
- ***Designated staff member.*** Encourage young volunteers who feel they have been

abused to report the abuse to a designated staff member. (Alert them to the fact that they may report abuse to any adult staff member with whom they feel comfortable.) Often abuse goes unreported because there is no one to whom the child or adolescent has been instructed to report the abuse. The designated individual should receive training in order to respond appropriately when a young volunteer makes an allegation of abuse.

- ***Parental notification.*** Develop policies relating to parental notification of suspected abuse. If the parents are not suspected of being the perpetrators of abuse, your organization may have a responsibility to notify them of suspected abuse of their child. You may be able to work with your child protective services agency or police department in the development of such a policy.

Hypothetical Case Study—What Should You Do?

A 16-year-old female volunteer starts showing up for service time at your center bearing bruise marks on her arms and legs. When you confront her about it, she shyly informs you that she and her 17-year-old boyfriend, another one of your young volunteers, sometimes get rough when they "fool around." She makes it very clear to you that this activity is fully with her consent. She assures you that she is taking all the necessary precautions. She also begs you not to tell her parents, and intimates that her stepfather has beaten her for seeing boys in the past. You confront the boyfriend, who confirms that the sexual conduct is consensual, and indicates that he believes he has a right to treat his girlfriend as roughly as he likes. What should you do?

Discussion: You should begin by checking the laws in your state to determine whether you are required to report the consensual sexual activity of minors. Even if your state does not require you to report this type of sexual activity, your laws may still require that you report physical child abuse, such as a beating. You should check with local authorities to ascertain your legal duty in this matter. Even if the consensual activity between the two volunteers does not amount to reportable child abuse, the conduct of the stepfather might. Make sure that you are aware of your legal obligation, if any, to report a reasonable suspicion of child abuse.

Your response to this problem may boil down to whether you feel it appropriate to sit back and allow a 16-year-old girl to be beaten, even if she assents to the beating. What your volunteers do on their own time is their own business, but would you react the same if you knew that your volunteers intended to engage in a gun battle with a rival gang after they finish their service activities? In the latter situation, would you be compelled to notify the authorities?

Since both the boyfriend and girlfriend are participants, does your acquiescence affect the model of conduct you wish to develop in all of your young people? Can you stand back, let this occur, and not send a message to all your other young participants?

Perhaps the most troubling issue, as far as risk management is concerned, is

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the potential liability of your organization if one day the boyfriend seriously injures the girl and you have done nothing to prevent it.

Despite the girl's protestations, it would probably be in your organization's best interests to notify at least one of her parents. At least one court has held a school responsible when it failed to notify a parent of its knowledge of a suicide-homicide pact between two girls.[27] Whether the courts in your jurisdiction would extend this duty to notify to your organization is unclear at best. Nonetheless, the safest plan of action may be to contact the girl's mother (apart from the stepfather) and discuss the matter with her. If you have serious concern about the girl's safety from her stepfather, then it might be wise to inform the child abuse authorities of her fears. Contact your organization's legal counsel to determine whether notifying child abuse authorities would obviate your need to contact her parents. A conference with the parents of the boyfriend might also be wise.

Hazardous Service Activities

Preventable accidents are one of the leading causes of death among children and adolescents.[28] One of the simplest ways to prevent accidents is to make sure that the projects you assign, the work site you select, and the tools and materials you provide are safe and appropriate for the age of your participants. You can do that by restricting young people from some activities, modifying other tasks to accommodate less mature physical and mental levels, adapting training techniques, and providing adequate supervision.

To prevent accidents, you must first match the correct task to the correct child. Avoid any task that requires the use of dangerous equipment. Look to federal and state labor laws for guidance as to the types of activities prohibited for children of certain ages. When assigning a task, consider the whole job and all the potential ramifications. Even the simplest task can involve hazards for young people. For example, consider the risks involved in enlisting a group of fourth grade volunteers to help advertise a fund raising car wash. While it may be appropriate to send adult volunteers, or even teenagers, through a shopping center parking lot to place advertising flyers on each car, this might not be a suitable task for the fourth graders. Consider the potential traffic hazards of these relatively small children meandering between car lanes around moving cars. If possible, find another, safer way for these young people to help advertise. For example, place the fourth graders on the sidewalk of the shopping center to hand out flyers to each person leaving the stores. Even the simplest and most benign-looking task may pose hazards remediable by minor modification, instruction and supervision.

Work materials may also pose a particular hazard to some young people. Many of the products that are relatively harmless to adults can prove dangerous to younger users. For example, simple art supplies used for sign painting or decorating can pose a health risk to children. Cleaning material used to launder clothing for the homeless can prove caustic to young skin, or deadly if accidentally swallowed. Many products are now labeled as being hazardous to children. For example, The Labeling of Hazardous Art Materials Act[29] requires that all chronically hazardous art substances carry a

statement that such materials are inappropriate for children. Look for warnings on the labels of products and materials that you intend to use with or be used by your young participants. Read the owner's manual and/or the instruction booklet that accompanies a tool or product in order to assess its suitability for young people.

Hazards can also be found at the project site itself. Adults can take care of themselves. They usually respect the potential dangers of the unknown and approach new situations cautiously, somewhat wary of the unexpected. Young people, on the other hand, frequently lack the caution that comes from experience. They are often accustomed to being cared for. Many children and adolescents fail to pay attention to warnings. They often expect adults to heed the warnings and protect them from harm. To compensate for the trusting, sometimes naive attitude of many young people, you may need to add extra supervision and offer special training for projects that take place off-site.

Planning can greatly reduce the potential dangers of a hazardous work site. Take, for example, clean-up projects proposed for sites along a highway and a river bank. Protective gear (*e.g.*, gloves and work boots) is necessary for work at either site to protect hands and feet from refuse, such as broken glass, drug paraphernalia or hospital waste. Use brightly colored safety vests or other visual markers to make young people visible to drivers who operate their vehicles adjacent to the highway clean-up site. Young people working at the riverbank may need personal flotation devices to protect them from the dangers of sinkholes and fast-moving currents. You may even require a boat, ready to pull out any participant who accidentally falls in the river. Train young people to avoid certain debris, such as hypodermic needles, since these devices can perforate even the thickest of protective gloves.

Risk management should be aimed not only at protecting young people, but also at providing for the safety of the community. In the scenario above, for example, participants should be instructed in proper disposal techniques, so that no other person is injured by the waste.

The following are some suggestions that may help your organization provide safe projects, materials and work sites for children and adolescents.

- ***Simple tools***. Use the simplest tools to accomplish the job. If a child can reasonably accomplish a job using hand tools rather than power tools, hand tools are preferable. If, for example, a young volunteer can clean the floor of a day care center using a hand mop rather than a power floor scrubber, he should use the mop.
- ***Safety equipment***. Provide safety equipment necessary for the assigned task wherever possible. If you cannot provide the safety equipment, you must still require its use, and provide the information necessary for the young people to obtain their own. Under these circumstances, make it clear that participation will not be permitted unless the safety equipment is worn. Offer alternative tasks to those who cannot supply their own safety devices.
- ***Skill proficiency***. Explain and demonstrate every tool or piece of equipment that your young volunteers will use. Stress safety in the operation of all equipment. When a young volunteer's position involves the use of tools or equipment, have that individual demonstrate proficiency and knowledge of safety rules before permitting her to independently operate or use the equipment. If, for example, your

participants need to wear safety goggles to operate mowers and trimmers in a yard clean-up project, stress the need for goggle use and provide goggles whenever possible. Supervisors should monitor performance to make sure that the participants are wearing the safety devices while using the equipment.

- ***Animals.*** Avoid placing young people in contact with animals that have not been examined by a veterinarian, those with violent tendencies, or those that are acting unusually. In many situations where children care for animals, such as humane society shelters, the animals may be suffering from physical or behavioral problems. Even the gentlest animal can pose a health hazard if it carries a disease harmful to humans. Think of an adorable kitten that children cannot resist petting or cuddling. How does this image change if you learn that the kitten has rabies and that each child (and adult) who has come in contact with the animal requires a series of painful rabies shots? In short, think twice about assigning young people to work with animals unless they are adequately trained or can be placed under direct adult supervision at all times.
- ***First aid.*** Always have adequate first aid kits available and make sure at least one of the adults present is capable of administering the first aid contained in these kits. Young people, especially adolescents, could also be trained in elementary first aid. In addition, obtain signed health and treatment forms from parents and have these available for each participant at any off-site project. Have a plan and a means for evacuating injured personnel to the nearest hospital.
- ***Toxic materials.*** Avoid having children use toxic materials or any substances to which they are allergic. Toxic materials include: dusts or powders that can be inhaled, as well as those that can get into the eyes; organic solvents, volatile glues, or solvent-containing products, such as aerosol spray cans; anything that stains the skin or clothing (or that cannot be washed out of clothing); and acids, alkalis, bleaches, or other irritants or corrosive materials. If you must use these materials, do so only after giving appropriately aged young people adequate safety instructions. Never use donated or discarded materials for which the ingredients are not known, or very old or unlabeled materials that may be toxic.

Hypothetical Case Study—What Should You Do?

Your organization has received a proposal from a downtown homeless shelter, inviting your 10th grade volunteer group to help on a weekly basis. The young people's duties will involve preparing beds for new visitors, doing laundry, and finding suitably sized clothes for new arrivals. Is this an appropriate placement for your young participants?

Discussion: As heartless as it may sound, a homeless shelter could pose too many health hazards for young people. Many homeless individuals carry lice and other parasites that would be happy to find a new home with one of your young volunteers. Homeless individuals may also carry untreated infections, to which young people may be particularly susceptible. Laundry work can expose young people to blood and other bodily excretions that can transmit infection. The materials used in the laundry to combat the infestations and infections can be quite caustic and dangerous to young skin and lungs.

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Many of these hazards can be neutralized or reduced by careful preparation, planning and appropriate job selection. Start off by making a visit to the shelter to view, first hand, the nature of the operation and facilities where the young people will be expected to work. Talk to the shelter's administrators about the methods they use to counteract the spread of infestation and disease. Attempt to get candid information about infections or injuries suffered by the adult personnel. Find out if protective gloves and other protective clothing can be used and whether these have proven effective for the shelter's personnel.

If you feel that the risks can be neutralized, make sure to provide adequate training to your young people, so that they are fully aware of the precautions they must take to avoid injury and illness. Also be sure to obtain signed informed consent forms that fully apprise the young people and their parents of the potential hazards involved in the work.

If you do not feel that you can properly neutralize the risks, find other related projects that your young people can do to help. Have them organize clothing drives and/or quilt making projects for the beds in the facility.

Young People Caring for Young People

Just as some adults are not meant to work with children, some young people should never be placed in charge of children. Even the most reliable young person may have limited child care experience or may not be prepared to handle child-related emergencies.

The laws of your state may limit the manner in which you utilize the services of your younger volunteers, especially in licensed day care facilities. Many states impose mandatory adult/child ratios and may prohibit you from counting young people under a specified age as adults. The state of Virginia, for example, requires that volunteers be at least 14 years of age if they are to work with preschool and younger age children in a licensed day care facility. Several states require licensed day care facility workers to submit to physical examinations and TB tests before they may be permitted to work with children. State laws may impose similar requirements upon the young people who volunteer their services in these facilities. If you intend to place young volunteers in a child care assignment, you can contact your local authorities for information concerning the laws regarding the use of minor volunteers in child care facilities. The following suggestions will help you to reduce the risks potentially involved with young people caring for children.

- ***Screening***. Use the right candidates for the job. Before placing young people in charge of other young people, get references from baby-sitting jobs, church groups, and/or school to support their child care skills.
- ***Training***. Unlike other species, humans do not have instinctive child care skills. Young people need to learn how to hold an infant, change diapers, bathe, feed and otherwise care for the youngest, most vulnerable members our society. If caring for older children, young people need to learn how to stop fights between children, as well as how to meet their behavioral characteristics and limitations. These mea-

sures will reduce the chance that your young people will be accused of improper supervision and/or child abuse.

Depending upon the ages of the children that are to be cared for, the young volunteers should be instructed in activities that should be prohibited for their young charges. For example, if young volunteers are watching a group of three-year-olds in a playground, they might be instructed to keep their charges only on the swings and slides and off the jungle gym that is too high. If a group of adolescents is helping elementary school children in a computer lab, the volunteers should perhaps be instructed to restrict the children from entry onto the Internet or from some software programs used by older children and adult staff.

Training should also include the necessary instructions for dealing with an emergency. Make sure the young volunteers know who to contact and how to contact them. Volunteers should also be instructed in what not to do, such as administering medicines or moving a seriously injured person.

- ***Parental permission.*** Make sure that the parents of the children being cared for are aware of and consent to the use of young people as caregivers. In obtaining this consent, make sure to inform the parents that the young volunteers will serve as supplementary, not primary, care providers. If a parent refuses to give permission, make sure that his or her wishes are met.

It would also be wise to obtain parental permission from the parents of the young volunteers. Make sure that both the parents and the young participants understand the assignment and are aware of what will be expected of them. Parents and volunteers should sign their acknowledgment that they are willing to take on this responsibility.

- ***Supervision.*** Maintain a high level of adult supervision in your child care program. Older children and adolescents should supplement and not replace adult staff members. Plenty of adults should be available, not only to care for the children, but also to monitor the activities of the young volunteers and to answer questions, offer guidance, and solve problems that arise.

- ***Safeguard against abuse.*** Some young people mistreat others, and the number of reported incidents is rising. Avoid leaving a single, young child care provider alone with any one child, including at any time when a young child needs to be accompanied to the bathroom. Nap time and bathroom trips are frequent occasions for sexual abuse. Children with disabilities are especially vulnerable targets. Keep in mind that both male and female caregivers can be child abusers. Apply the same risk management strategies to your young people of both sexes. Stress your organization's commitment to providing a safe, nurturing environment for the children in your program and make clear that any suspected abuse of children will be reported to the authorities.

- ***Discipline.*** Clearly establish that your young people should neither spank a child nor implement any kind of physical or psychological discipline. Adult supervisors should be exclusively responsible for exercising behavior control. Most young

people lack the experience or maturity that accompanies this responsibility. Abuse need not be physical or sexual. Psychological abuse, delivered by insensitive or merely inexperienced caregivers, can scar a young child.

- *Child abuse reporting*. Educate your young participants about their legal obligations to report suspected child abuse. Teach them the signs of possible abuse and encourage them to bring any suspicions to you.

Hypothetical Case Study—What Should You Do?

Jamie (age 13) and Brick (age 14) have volunteered to help with child care during their junior high school's parents' club meetings. When they arrive, several parents are waiting to drop off their children. None of the adults who have agreed to supervise the child care operation has arrived. Jamie and Brick consult you, but you are unable to assist, since you are required to run a meeting in another part of the building. You are reasonably sure that the adults will be along shortly. Without the adult supervisors, you are in violation of the terms of your insurance policy. The parents are willing to leave their children with the two young caregivers, but you have no forms available for the adults to sign giving their permission for the child care under these circumstances. What should you do?

Discussion: Do not leave these two young volunteers alone with the children! If necessary, delay the meeting until the adult supervisors arrive. Alternatively, ask the parents attending the meeting to each take a 15 minute shift to supervise the child care until help arrives. If necessary, move the child care operation into the back of the room where the meeting is taking place. If all else fails, cancel the meeting and reschedule it for another time.

Do not be misled by the parental assent to the child care situation. Although the parents are purportedly assuming the risk of having their children supervised by teenagers without adult supervision, they are doing so with the expectation that adult supervisors will be arriving shortly. What if no adults arrive and a child is injured during the child care session? What if one of the young care givers needs to leave the room and the remaining adolescent care giver is incapable of dealing with the needs of all of the children in his or her care? Even parents who assent to the child care arrangement may bring suit on behalf of their child if he or she is injured as a result of inadequate supervision. Moreover, the parental assent does not change the fact that the situation may place you in violation of your insurance policy, leaving you potentially without coverage if anything goes wrong.

Fund-Raising and Money Handling

Young people can often help in fund-raising efforts. Children and adolescents engaged in fund-raising bring legitimacy and innocence to an otherwise unpleasant task. They can be useful in varied projects such as selling products; washing cars; participating in walk-a-thons, bicycle races or other athletic events; performing in carnivals or talent shows; and soliciting from door-to-door.

Money-raising activities can make your young people a target for street crime. A

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miscalculation or careless loss of money can destroy your organization's good name. The products sold, including the sales of homemade baked goods, if not carefully selected and handled, can become contaminated and hazardous to consumers, who may hold your organization responsible for the consequences.

You can control most of these risks through careful planning and proper management. Before engaging in any fund-raising effort, analyze the task and create a plan to reduce hazards. Familiarize yourself with any local or state laws that regulate the use of young people for soliciting and sales for fund-raising. Assess the site of fund-raising. Consider how to provide traffic control at a car wash, how many supervisors to provide at the bake sale in front of the supermarket, or what kind of equipment to supply for a bike-a-thon. Discourage spontaneous fund-raising efforts or any money-collecting activities that lack planning and adult supervision.

Fund-raising activities, regardless of their nature, deserve the same risk management attention as any other activity sponsored by your organization. Attention to detail, proper equipment, and sufficient supervision are all essential, even though the young people are likely to be off-premises during their solicitation efforts.

The following general risk management tips for fund-raising are among those recommended by the Camp Fire Boys and Girls and the Girl Scouts of America.

- ***Parental permission***. Before allowing young people to engage in money-raising activities for your organization, obtain written permission from the young people's parents or guardians. Parental permission forms should include a written copy of the rules for fund-raising, together with a signed statement verifying that they have read, agreed with and will help enforce the rules. Rules should inform parents, leaders and children about the ramifications of failure to comply.
- ***Age appropriate activities.*** Allow young participants to engage only in money-earning activities that are suitable to the age and abilities of the young people. Gambling and sales of alcohol, for example, are unlikely to be appropriate for minors.
- ***Adult supervision***. Have adequate adult supervision present whenever young people participate in a money-earning project that takes place outside of organization premises. In addition, parents should be informed about their young people's whereabouts when they are engaged in product sales or door-to-door solicitation. Young volunteers should always work in pairs or teams and should never engage in selling by themselves.
- ***Identification***. Make sure that your young people can be recognized as authorized solicitors for your organization. Provide your young people with some form of identification they can show whenever their identity is questioned. Your organization may want to distribute a solicitor's kit that contains information about your group as well as a badge, T-shirt or other item that will identify the fund-raiser as one of your team.
- ***Receipts***. In sales projects, a system of signed receipts should be used for every person in the line of distribution. The receipt should record the value of the items received and should be signed by each person involved in the transaction. Each party should keep a copy. Money from purchasers should never be collected in

advance of product delivery, but payment should be received for previously distributed products before more products are issued.

- ***Money handling***. Train your young people not to intermingle money from sales with their own personal funds. For that purpose, each seller should be provided with an envelope for keeping money. Avoid giving your participants the responsibility of carrying large sums of money by instructing them to turn in their collections frequently. Sellers should receive a receipt to show how much money they deposited and how much product they sold.
- ***Homes***. Young people should be instructed not to enter homes when selling products or collecting money. If they wish to sell to the residents of an apartment complex, they should obtain permission to sell from the manager.
- ***Forms of payment***. Suggest that donors pay by a check made out to your organization rather than submit cash. Checks made payable to your organization are less likely to disappear or be co-mingled with a seller's personal funds.

Hypothetical Case Study—What Should You Do?

Your organization runs an annual Casino night fund-raiser with the permission of your local legal authorities. Traditionally, alcoholic beverages are served and the main activity is gambling, including roulette wheels, black jack, and craps. One of your board members proposes that you coordinate the fundraising efforts of your younger participants (ages 12–14) by allowing them to operate a candy concession at the Casino night. Should you permit this activity?

Discussion: As convenient as this arrangement might be, it is probably not the best place for your young participants. The presence of alcoholic beverages and gambling may pose too many temptations for the young people who serve your group.

A creative alternative would be to supplement your Casino night with a baby-sitting option. Invite Casino night attendees to bring their children to a location separated in some way from the scene of the gambling and alcohol, where a group of your young participants, well-supervised by some of your adult staff or volunteers, watch the children until their parents are ready to leave. Have lots of board games and toys available and sell the candy at this location to both children and their parents.

Board Membership and Governing Responsibilities

Many young people who serve an organization develop an interest in how the organization is run, how participants (particularly their peers) are treated, and how the service opportunities are chosen. In short, many wish to help make decisions for the organization, and often want to serve on the board of directors.

Some organizations have passed corporate bylaws that allow young people to serve on their boards. Two organizations in particular have made it their mission to increase youth board membership and to help prepare young people to serve effectively. Youth on Board has focused on the task of recruiting organizations to place youth in govern-

ing positions and to help these organizations to make youth governance a positive experience. Community Partnership with Youth, Inc. has concentrated on training young people to serve as effective board members. Both of these organizations are excellent sources of information on the ways in which young people can help govern your organization. (Addresses and telephone numbers for these organizations are listed at the back of this book.)

Legal problems can pose an obstacle to youth board participation. Problems arise from the fact that in many states, individuals under the age of 18 are viewed as "disabled" or "incapacitated" for legal purposes, a condition that does not disappear until the date that the young person reaches majority. In the eyes of the law, this disability prevents minors from entering into contracts. In most states, a contract entered into by a minor is viewed as "voidable." The minor is given the right to break or disaffirm the agreement either before or shortly after he or she reaches majority.

The inability to enter into a binding contract can pose an obstacle to the minor's ability to serve on a corporate board. This poses a particular problem for nonprofit organizations, since most of them are corporations. Many corporate actions taken by the board of directors, including employment contracts and bids for goods and services, either constitute or closely resemble contracts. When a minor board member retains the ability to disaffirm his or her role in the making of a corporate contract, the organization's credibility with its employees and vendors may suffer. Businesses who normally enter into business or employment relationships with the nonprofit organization may possibly view the presence of minors on a corporate board as a potential legal problem and may therefore choose not to contract with the organization.

The minor's ability to disaffirm places the board's decision making authority in perpetual jeopardy. *(Example: The board of a nonprofit service agency includes two minor directors. The board votes to discharge an organization employee. The vote to discharge is carried by the two votes of the minor board members. After the employee is discharged, she files suit against the board and its members, individually, for employment discrimination. The two minor board members, attempting to avoid participation in a lawsuit, disaffirm their votes. Without the votes of the minors, the tally of the vote to discharge changes to a vote to retain the employee on staff. The board is then forced to reinstate the now disgruntled employee and must also pay the legal costs required to defend the discrimination suit.)*

The state of New York has enacted very specific legislation that enables young people to serve on the boards of certain types of organizations, including the Girl Scouts of the United States of America, Inc.; Camp Fire Girls, Inc.; Aspira of America, Inc.; and Aspira of New York, Inc. Other groups, organized for recreational or youth development and delinquency prevention purposes primarily for the benefit of individuals below eighteen years of age, are also permitted to select one or more board members between the ages of 16–18.[30]

New York appears to be the only state so far to enact legislation specifically authorizing the election of minor board members. Nonetheless, board membership is possible in a number of other states. Although several states, such as Florida and Pennsylvania, require board directors to be at least eighteen years of age, many other states impose no such age restriction. In these states, it is best to check with legal counsel to obtain advice as to the legal propriety of including minors on your board of directors.

To avoid some of the legal obstacles imposed by state laws, Anne B. Hoover, Director of Community Partnerships with Youth, Inc., offers the following alternatives to full voting board membership for youth.

- ***Count minor votes differently.*** Classify the votes taken either in committee or in board decisions as minor or adult votes. Any committee or board votes should be recorded not only as yeas and nays, but also as youth or adult votes, as follows:

	Youth	Adult
For	1	15
Against	1	9

  If any vote is carried by virtue of the youth vote, or if a youth vote breaks a tie, the committee decision or board motion must fail. Votes that would carry regardless of the youth vote may go forward. State law may require that this modification in the counting of votes may need to be set out in the bylaws of the corporation. Check with your corporation's counsel before adopting this technique.

- ***Unofficial status.*** Have young people serve in a non-voting capacity on the board. This allows them to join in discussions, serve on committees, and participate in all board events, but does not give them a binding vote. Unfortunately, most young people are dissatisfied with this option, since they prefer to have voting rights.

- ***Committees.*** Have young people serve on committees of the board, such as Programs, Fundraising, Future Planning, Marketing, or Finance. Young people can vote in their committees and then submit committee proposals to the board. Because the board must ratify any committee decision, all youth participation will be supported by a legal vote of the board. Although this alternative does not offer the young people official board status, it still allows them the experience of decision-making at the committee level.

Hypothetical Case Study—What Should You Do?

Your organization has been allowing young people to serve on your board of directors with full voting rights for the last two years. After reading this publication, you consult your legal counsel, who informs you that in your state, the qualifications for board membership must be set by the bylaws of each corporation. Your organization's bylaws state nothing about the age of board members. Your attorney advises you to add a provision to your bylaws specifically permitting individuals under the age of 18 to serve. When the amendment to the bylaws is proposed, adult members of your board, who have long resisted the introduction of young people, see this as their opportunity to remove the younger element. The vote passes, but only by a one vote margin. Both of the young people voted for youth representation. Had their votes not been counted, the measure would not have passed.

Discussion: Under the most conservative interpretation of your state's law, the absence of any language in your bylaws authorizing the representation of minors makes youth board membership impermissible. Under this interpretation, the two young board members could not have been members at

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the time the vote was taken, and therefore should not have been permitted to vote at all.

The obvious solution to this dilemma is to remove the youth board members from their positions. The obvious solution is not necessarily the best. The two former youth board members, disgruntled at their removal, could conceivably sue your organization for this act. Whether their claim would be successful is questionable. The legality of youth board membership simply has not been tested in the courts. The very uniqueness of the claim makes it likely that a court will consider the matter, leaving your organization no choice but to bear the bad publicity and costs of a legal battle.

A compromise of sorts may turn out to be a better solution. Allow the two young people to complete their terms, rather than summarily remove them from their spots. Then modify your board's voting procedures in order to count each vote as adult or youth. Make sure that all board members understand that no vote will go forward that relies on the vote of a minor board member. After the youth board members have completed their terms, take another board vote on the issue of young board members. If the tally of the remaining adult board members remains against youth board membership, then close the elections to your young participants. You may still offer your young people the opportunity to serve on committees that present findings to the corporate board.

Your bylaws' silence need not be interpreted to exclude the representation of young people. The fact that your bylaws say nothing could easily be interpreted to reveal the intention not to exclude young people. After all, do your bylaws specifically permit you to include women or individuals over the age of 65? Do you interpret the absence of this language to prohibit the board membership of these groups? On the other hand, what do your bylaws say about the board membership of individuals who are mentally incompetent, or how about those who are only five years old? Is it safe to assume that the lack of specific board membership requirements will adequately protect your board from those who are clearly unqualified to serve?

Work with your organization's legal counsel to develop a situation that will enable your young participants to make their contribution to the governing of your organization without violating your corporate bylaws or the corporation laws of your state.

Behavior Control

At times your staff will need to control the behavior of the young people who participate. To develop a behavioral control strategy you must first decide about the atmosphere you wish to set. Keep in mind that children often express their enthusiasm in a louder and less reserved manner than most adults. Young people may need to learn proper workplace demeanor, but should also be permitted to express normal levels of ebullience. Attempt to set reasonable boundaries for the type of behavior you expect, but also try to give young people adequate opportunity to blow off some steam.

Of the various forms of discipline, corporal punishment—the purposeful infliction

of pain to change a child's behavior or to penalize for disapproved action—is the most controversial, and subjects your organization to the greatest degree of risk.

Twenty-three states have chosen to abolish the use of corporal punishment in schools. These include Alaska, Arizona, California, Connecticut, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, Virginia and Wisconsin. In the remaining states, many cities have prohibited its use. These include Atlanta; Baltimore· Chicago; Cincinnati; Cleveland; Miami; New Orleans; Oklahoma City; Philadelphia; Pittsburgh; St. Louis; Seattle, Washington; Austin, Texas; Boulder, Colorado; Charleston, South Carolina; Charlotte-Mecklenburg, North Carolina; Columbia, Missouri; Little Rock, Arkansas; Ogden, Utah; Raleigh, North Carolina; Reno, Nevada; Spokane, Washington; Tampa, Florida; Topeka, Kansas; Walla Walla, Washington; and Wichita, Kansas.

It is highly unlikely that your organization would be legally permitted to control behavior with any form of physical punishment. Corporal punishment need not involve hitting or paddling. It has also been held to include pinching, ear twisting, punching, shoving, and forcing students to exercise to exhaustion or to assume physically painful positions. Thus, even the acts of pushing a child into a chair or of using a particularly tight grip to get a child's attention can amount to a form of corporal punishment. These unlawful uses of physical force can lead to civil and criminal battery charges.

Consider your organization's insurance policy when developing your behavior control strategy. Many policies contain exclusions that apply to intentional acts. Your insurance company may have the right to exclude coverage when one of your staff members disciplines by using force with the intent to physically injure.[31]

Laws that prohibit corporal punishment do not bar all forms of physical contact. Most of these laws do not prohibit the use of reasonable and necessary force to quell a disturbance, to remove a young person from the scene of a disturbance that threatens physical injury to persons or damage to property, to prevent a young person from inflicting harm to himself, to obtain possession of weapons or other dangerous objects or controlled substances, or to defend oneself against physical harm.

Take the following into consideration when forming your organization's behavior control plan.

- ***Physical discipline.*** In light of the number of laws that prohibit corporal punishment and the view of the courts on the use of excessive physical discipline, it would be advisable to adopt a policy that strictly prohibits physical discipline or restraint of any kind, except in extraordinary circumstances, such as where there is a need to protect the young people or others. Rules that merely bar the use of physical discipline may be insufficient. A policy that discourages any unnecessary physical contact would involve less risk. Keep in mind that even a strong grip on a child's shoulder can result in injury if the child attempts to twist to escape.
- ***Self-discipline.*** Involve your young volunteers in creating their own code of conduct. When they participate in laying out the rules, your volunteers will have a greater stake in obeying them.

- *Private discipline.* When it is necessary to reprimand a young volunteer, do so in private, away from other volunteers and from your service recipients. Treat your young volunteers as you would like to be treated in a similar situation. By discreetly calling the youth aside and correcting the behavior, you are providing a learning experience from which he or she can benefit. If you reprimand in public, you cause young people to lose face and probably to become defensive or resentful. They will consequently learn less from the experience.

Hypothetical Case Study—What Should You Do?

You have received two concerned communications from parents of young people in your program about the conduct of one of your adult staff members. Justin, the staff member, recently supervised a car wash in which several 14-year-old participants washed cars to raise money. On two separate occasions, Justin grabbed one of your volunteers who was not paying attention, shook them and warned them to watch out for cars coming toward them. The parents criticized Justin for being too physical and stated that each of their children had bruises on their arms as a result of Justin's rough conduct. Both parents admitted recognizing that Justin's goal was to protect their kids. Although you were not there, you expect that had Justin not acted quickly, a more serious injury would have occurred. On the other hand, you are aware that Justin has a very physical and aggressive manner. Should you take any action?

Discussion: Regardless of Justin's innocent intent, his conduct constitutes a lawsuit waiting to happen. His physical contact with the young people is bound to be misinterpreted at some future time, leaving you open to a lawsuit, especially now that the car wash incident has put you on notice of the potential problem. Justin's behavior must be stopped. The safest route would be to immediately change his service assignment, by giving him duties that do not involve child or adolescent supervision.

A somewhat more risky plan would involve giving Justin a strong warning against physical behavior, with the admonition that any further physical contact would result in termination. This solution leaves you open to a lawsuit in the event that Justin slips again. If Justin defends his actions, chances are good that he will repeat the conduct. Although Justin means well, he has an inappropriate way of displaying his intentions. Justin may be an excellent staff member, but may be the inappropriate choice for working with young people.

Health

Without proper planning and preparation, young people in service may be exposed to unnecessary health risks. These risks include communicable diseases, injuries, and aggravation of chronic conditions. Your organization may be exposed to additional risks if your young people require the administration of prescribed medications during service time.

Most childhood diseases are now controlled by vaccinations. Children must receive vaccinations against a number of dangerous illnesses before they reach school age. If you are concerned about the vaccination status of your young volunteers, you can

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request that they provide a form from their family physician indicating the dates they received each of the vaccinations required by your state's law.

Vaccinations are as yet unavailable for a few childhood illnesses. Fortunately, most of these diseases pose minimal harm, other than inconvenience and a limited period of incapacity. A few illnesses, well tolerated by children, pose severe hazards for adults, especially pregnant women. For additional information about communicable childhood diseases, available vaccinations, incubation periods, and symptoms, contact your state's Department of Health.

Your adult staff members and volunteers who supervise the young people in your program may need to be screened for certain communicable diseases. Individuals with tuberculosis, for example, a particularly communicable and dangerous disease, should be screened and quarantined from young children. Many states require that staff members of licensed day care facilities, for example, submit a statement from a physician that he or she is free of tuberculosis in a communicable form. Your organization can require a similar statement from its adult workers.

The following suggestions may help you to establish a health protection policy for both young people and staff.

- ***Communicable diseases***. Develop procedures to prevent the spread of certain communicable diseases. For example, parents should be instructed not to send their children to service assignments when they suspect that their child has one of the following illnesses or conditions: chicken pox, measles, lice, or impetigo. Your state's health office can offer information about other illnesses that require similar precautions.
- ***Illness***. A child who comes to their service assignment with a fever or other symptoms indicating illness should be sent home promptly to proper adult supervision. While waiting to be released to the custody of a parent or other custodial adult, the child should be isolated from other young participants and from adult participants who are pregnant or who have a compromised immune system.
- ***Parental notice***. Parents should be notified when their child has been exposed to a communicable disease. If possible, the notice should contain information about symptoms and the incubation period of the illness.
- ***Physical examinations***. Physical examinations may be advisable to certify the health of young people volunteering for service positions that require significant physical exertion. These examinations could, for example, evaluate the cardio-vascular system and check for hernias or other weaknesses that could be aggravated by stress of lifting. Check with a physician about the desirability of physical examinations for your young volunteers.
- ***Health care workers***. If young people are asked to serve where they will be in contact with individuals who are ill, they should be trained in infection control. Young people who serve in hospitals, child care centers, nursing homes and other situations in which communicable diseases are common should be taught simple personal hygiene techniques, such as frequent hand washing, to protect themselves and others.
- ***Medications***. Your organization must decide whether it will take responsibility for

handling and giving out prescription medications to young volunteers. If so, medications should be collected upon arrival and redistributed at departure. Medications should only be given when accompanied by parental written authorization and a complete set of dosage instructions. Upon departure, depending upon the age of the young person, medication should be given to the parent or guardian, not to the child. Medications should be examined and a child should only be given a prescription that has not expired and that bears his or her name. Your organization should never allow a child to take medicine prescribed for another individual. If your organization dispenses more than a few medications, you should consider having a nurse on the staff for that purpose. Never allow a child or adolescent volunteer to prepare medication or to dispense dosages. Only adult staff members should have this responsibility.

Hypothetical Case Study—What Should You Do?

You are the director of a summer camp for children with developmental disabilities many of whom are on medication for convulsive disorders. One of the counselors-in-training (CIT) is a young volunteer who has epilepsy, and must take her medication on a daily basis. She comes to you in a frantic state one morning, claiming that she is unable to find her pills. You have been unable to contact her parents, and the physician, whose name is on the medication consent form, does not answer his page. The pharmacy that distributed the pills is located in another state, 250 miles away. Three other campers take the same medication and you could borrow a pill from one of these young people until you are able to reach the girl's parents or doctor. What should you do?

Discussion: Do not take the medication from another camper's prescription. Put the CIT immediately in a car, with an adult supervisor, and drive her to the nearest hospital emergency room or doctor's office. Only a doctor may prescribe the necessary medication.

Endnotes

[1]Wash. Rev. Code Ann. sec. 296-125-015(2).

[2]Md. Code Ann., Lab.& Empl. sec. 3-202 (1991).

[3]N.H. Rev. Stat. Ann. sec. 276-A (1987 & Supp. 1994).

[4]"A Summary of Older Driver Research," AAA Foundation for Traffic Safety.

[5]Insurance Institute for Highway Safety, Teenagers, January 1995.

[6]*Id.*

[7]Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents (Morris Green, ed. 1994).

[8]Insurance Institute for Highway Safety, Teenagers, January 1995.

[9]Laura Kann et al., *Youth Risk Behavior Surveillance-United States, 1993*, 44 Morbidity and Mortality Weekly Report: CDC Surveillance 1 (1995).

[10]Drug Traffic and Abuse in Schools, NSSC Resource Paper, p.9.

[11]Weapons in Schools, NSSC Resource Paper, p.4.

[12]*Id.*

[13]Hager v. Bellingham Sch. Dist. No. 501, 74 Wash. App. 49, 871 P.2d 1106, 1114 (Wash. Ct. App. 1994).

[14]Williams v. Columbus Bd. of Educ., 610 N.E.2d 1175, 1178-9 (Ohio Ct. App. 1992).

[15]Collins v. Sch. Bd. of Broward County, 471 So.2d 560, 565-66 (Fla. Dist. Ct. App. 1985).

[16]McLeod v. Grant County Sch. Dist., 42 Wash.2d 316, 255 P.2d 360 (1953).

[17]The Gang Intervention Handbook 4 (Arnold P. Goldstein, C. Ronald Huff, ed., 1993).

[18]Center to Prevent Handgun Violence, Kids Carrying Guns: Loopholes in State and Federal Firearms Laws.

[19]Howard N. Snyder, Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims: A National Report (1995).

[20]Juvenile Sexual Offending (Gail D. Ryan & Sandy L. Lane eds. 1991).

[21]Barton v. Bee Line Inc., 265 N.Y.Supp. 284, 285 (N.Y. App. Div. 1932).

[22]Or. Rev. Stat. sec.163.315 (1990); Gaither v. Meacham, 108 So. 2d (Ala. 1926); Hough v. Iderhoff, 139 P. 931 (Or. 1914); Elkington v. Foust, 618 P.2d 37, 40 (Utah 1980).

[23]Wilson v. Tobiassen, 777 P.2d 1379, 1384 (Or. Ct. App.) *rev. den.*, 784 P.2d 441 (Or. 1989).

[24]L.K. v. Reed, 631 So.2d 604, 608 (La. Ct. App.), *cert. den.* 637 So.2d 461 (La. 1994).

[25]*See*, People v. Stockton Pregnancy Control Medical Clinic, Inc., 249 Cal. Rptr. 762, 763 (Cal. Ct. App. 1988).

[26]Phyllis P. v. Superior Court, 228 Cal. Rptr. 776 (Cal. Ct. App. 1986).

[27]Eisel v. Bd. of Educ. of Montgomery County, 324 Md. 376, 597 A.2d 447 (1991).

[28]Laura Kann et al., *Youth Risk Behavior Surveillance - United States*, 1993, 44 Morbidity and Mortality Weekly Report; CDC Surveillance Summaries 1 (1995).

[29]15 U.S.C. sec. 1277 (1994).

[30]New York Not-for-Profit Corp. Law, sect. 701(McKinney Supp.1995).

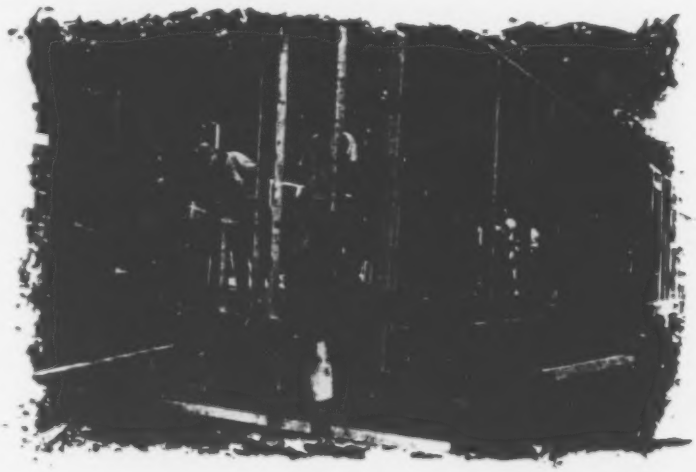
[31]Pennsylvania Millers Mutual Ins. Co. v. Crews, 361 S.E.2d 657, 658 (Ga. Ct. App. 1987).

Chapter 5: Service Scenarios Involving Young Participants

This chapter examines two common service scenarios where young people frequently engage in service. The materials below will examine risk management strategies that are particularly helpful for dealing with these common opportunities. The section on "Shared Responsibility" will offer suggestions for clarifying and transferring risk management responsibilities between the entities involved in the project. The section on "Family Volunteer Projects" will discuss methods for working with parents and other responsible adults to provide safe service opportunities for younger family members.

Shared Responsibility: Working in Cooperation with Other Organizations and Entities

On many occasions your work with young people may require you to share responsibilities with other adults, agencies or organizations. If you are an organization that has agreed to place young people involved in a service-learning program, you may, for example, work in conjunction with a school district. If, instead you are a school or school district seeking service opportunities for your students, you may need to coordinate your efforts with independent service organizations in order to place your students into their projects. Other potential cooperative arrangements may include service organizations that coordinate their efforts with other service organizations in order to find appropriate service placements for young volunteers.



Preparation

The key to effective risk management in each of these situations involves establishing, at the outset, the requirements and expectations of each person or entity involved. The following list of questions should be answered and agreed upon by all parties involved well *before* the actual service begins.

- Who will obtain parental permission and act as a liaison with parents?
- Who will keep track of and follow up on children's absences?
- How will responsibility for training and supervision be divided equitably and effectively between you?
- What kinds of records will each of you need to keep?
- How will you work together to enforce agency rules?

- How will you keep in touch with each other?
- Who is responsible for transportation of the young participants?
- Who is responsible for insurance?
- When is it appropriate to evaluate the work? How will this be done?
- Will there be an end date to the project or continuous coverage by a new group of participants?[1]

Planning enables you to best deal with entities or individuals outside the control of your organization. Carefully address every step of the process in advance. Develop a strategy that begins with the method by which you evaluate service proposals and ends with the manner in which you analyze the success of the venture. Your plan will change depending upon the nature of the organization with whom you will work, and upon the type of relationship you will share. The following paragraphs outline the highlights of an effective risk management strategy, illustrated by an example that typifies the cooperative scenario. The discussion will focus upon the following example.

> **Your service organization often places young people in projects that serve other organizations. One of the local nursing homes asks for assistance in painting their patient recreation room. You decide to assign a group of young volunteers to the task.**

Put Proposal in Writing

When another group or organization requests assistance, you should have a simple form available in which they can explain the project they have in mind. The form should ask for an adequate description of the opportunity. You can use the following items to develop your own proposal form.

- The name of an adult in the requesting organization who will be the liaison between their organization and yours.
- A description of the project, what is proposed, and what materials and personpower are needed.
- Any specialized training required and who will provide the training.
- Who will be responsible for providing tools and materials.
- When and where the activity will be conducted.
- Who will be responsible for supervising the young people performing the services.

You may want to get some background information on the group and in some cases may need to screen individual members of the group. Even for short-term work projects, you should interview adult leaders of the groups to explore their credibility and the nature of their commitment and to establish the boundaries of your organization's responsibilities.

Your youth participation supervisor sends the form to the nursing home administrator, who promptly fills it out and returns it to you. In addition to identifying the adult liaison, the form identifies the room to be painted and the times and dates that the room will be available for painting. The nursing home will provide the paint if you provide the labor. The facility knows of no special training required for the job. They have one adult who can supervise, but only when he is not required to perform other duties required by residents of the facility.

Assign Organizational Liaison

Both organizations need to designate individuals to be their contacts. The liaison for each organization is responsible for ensuring that the proposed activity fits within established guidelines. For larger organizations, this individual may be responsible for obtaining clearances from the Executive Director, Risk Manager or Risk Management Committee, and from department heads who may be affected by the proposed project. Each liaison is responsible for communicating the scope of the proposed project and for answering any questions posed by his or her counterpart.

The nursing home has designated one of their male physical therapists to be both the liaison and the supervisor for the project. He has made arrangements with the staff of the nursing home to keep the patients away from the room to be painted during the days when the work will be done.

Understand the Project

It is critical to the success and safety of the project that your organization understand its proposed responsibilities, just as it is also critical for the other organization or individuals making the proposal to understand your limitations and expectations.

The youth participation supervisor from your organization has visited the nursing facility and has measured the room that needs to be painted. He has consulted with the local paint store and knows how much paint will be needed. The nursing home liaison explains that the painting must take no more than 2 days, since the patients will need the room and will also not benefit from prolonged exposure to paint fumes. Your organization has 20 young people and five adults who have volunteered for the project, more than enough to complete the job.

Clarify Expectations

Even a simple project such as this one contains pitfalls that can result in a complete fiasco. For example, in the early contacts between the organizations, no one brought up the subject of paint brushes, rollers, ladders, and other materials and equipment necessary to perform the task. Will the young participants arrive and begin painting, or are they expected to prepare the walls for painting, mask surfaces, and move the furniture out of the room? Risk management issues here include the possible use of toxic substances in wall preparation, the lifting of heavy furniture, and responsibility

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for the safety of the equipment to be used. All of these issues need to be resolved in the planning done for these service opportunities. Specific activities can be charted out on a time line to minimize the chance of overlooking critical details. Adolescents may be involved in the planning, but confirm all arrangements through the adult liaisons.

The issue of supervision is especially important. Will one entity or both be in charge? In every project, responsibility for the supervision of the young people must be clarified. A written agreement between the parties should set out supervision responsibilities and expectations.

> Your discussions with the nursing home liaison reveal that they can supply the paint, rollers and brushes, but have no ladders. You agree to provide the ladders, and borrow four of them from adult volunteers. You have decided that the safest practice is to keep the young participants off the ladders and to allow only the adults to climb. You therefore request that the nursing home obtain several long handled rollers so that your young volunteers can paint some of the higher areas without using the ladders.
>
> The nursing home liaison informs you of the type of paint he would like to use. He has chosen the paint because he can get it for a special price from the family of one of the patients. You veto his choice because it is an oil-based paint that releases toxic fumes that would be hazardous to both the young people and the elderly patients of the facility. He raises the matter with his superiors and the nursing home agrees to provide a more expensive acrylic-based paint.
>
> The liaison, who is also a therapist, can supervise activity for only four of the eight hours that your young people will be present during each of the two days of painting. You mutually agree that during the four hours that he is present, he will be responsible for supervising the project. During the remaining four hours, you will provide an adult supervisor to take on the responsibility.

Implement Service Project

On the date of the actual project, the young people and their adult supervisors should be introduced to the personnel from the other organization with whom they will be working. Fire exits, rest rooms and other facilities should be identified. On-site training, where necessary, should take place. The party responsible for supervision should take over, and representatives of the other entity should step back and assume an advisory role only, unless a more aggressive stance is necessary to ensure the safety of the participants or the interests of the organization. If, for any reason, the project seems to be out of hand, the liaisons for the two entities should decide whether to end it altogether.

If one of the young people is injured on the project, the liaisons for both entities need to make sure that proper medical attention is provided and that medical forms are completed that meet the requirements imposed by each organization.

> The painting commences as scheduled. Two of the adult supervisors fail to show when scheduled, but the three remaining adults adequately handle the work. One of the young participants is slightly injured when he pinches his

finger while trying to close the lid of a paint can. The nursing home's liaison ushers him promptly to the nursing facility's clinic where he is examined and determined to have no serious injury. He is sent home with ice and returns the next day for painting, none the worse for wear. Both your organization and the nursing home fill out and file all the necessary incident forms.

After the first day of painting, your organization leaves the windows open to air the room. A thunderstorm during the night sends a fair amount of water into the open window, causing some damage to the molding under the window. The nursing home staff are not happy, but agree that since they gave no instruction to the contrary, they share in the blame. They agree not to pursue the matter.

The work is completed on the second day and it meets the satisfaction of both the nursing home liaison and the administrator. Your young people clean up and leave all remaining paint, brushes and rollers in a room designated by the liaison.

Debrief

After the project is over, your organization may want to assess the project's success. To do this, you could contact the liaison from the other organization and ask for his or her opinion of how the project went.

- Did it meet their expectations?
- What would they do differently?
- How could your organization improve its process?

You should also check with the staff in your own organization to determine if the project met its objectives. Questions for your staff include:

- Were there any significant problems with the effort?
- Did the project result in furthering the mission of your organization? How?
- Were any damages done? If so, does an insurance claim need to be filed?
- Was anyone hurt? If so, what follow-up is appropriate to ascertain the extent of the injuries and nature of medical care required?
- Did anything happen for which your organization should prepare for litigation? If so, what? Has your organization contacted its legal counsel?

You contact the nursing home's liaison for a debriefing. He informs you that the nursing home administration was satisfied with the work except for the issue involving the open window. Also, they had a number of complaints about the noise made by the young people. He thanked you for the assistance.

In your report to your organization, you inform them of the minor injury suffered by the participant. You have made follow-up inquiries, and have found that he suffers no long term effects. You and the other supervisors have discussed the event and it appears to have been a pure accident. You agree, however, that

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training for any future painting projects will include a brief demonstration of opening and closing paint cans.

The window incident leads to much discussion. You decide that in future agreements with other entities you will attempt to negotiate a release, asking the other organization to release you from any responsibility for damage to their facility or property.

Finally, you discuss the nursing home liaison's reference to the complaints about noise. You propose that future projects in hospitals and elderly care facilities require that you offer training to the participants in special considerations for the sick and elderly.

Family Volunteer Projects

Many organizations are involving young people through family service projects. In some of these projects, the family comes to your organization as a unit and is assigned to a service task as a unit. In other projects, although the families may arrive as a unit, they work at different service activities. You will need to temper your risk management strategies to conform to the type of service arrangement you are coordinating.

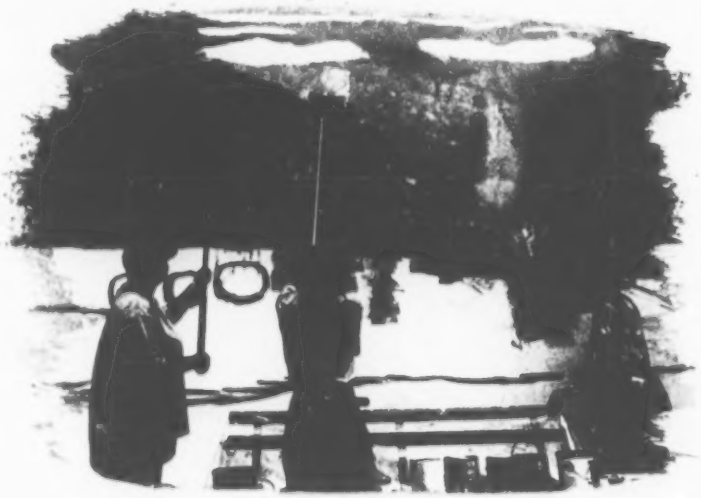
Family service projects encourage the service of younger children. Sometimes families will bring in very young children. You will need to make the determination as to whether you intend to take responsibility for the very young. Whatever your decision, you will need to communicate it clearly to your volunteer families. If you do not wish to take responsibility for pre-school age children, you may be forced to require that parents not bring the very youngest offspring to the service sites. Unfortunately, this may discourage some families from offering their services, but such prohibitions may be the only way to avoid responsibility for the very young. Alternatively, you could willingly accept the responsibility for the young children and set up activity centers staffed by employees and/or other volunteers. If you do take this route, you will need to develop strict risk management strategies, similar to if not the same as those implemented in registered day care facilities.

Even with older children and adolescents, the mere presence of adult family members does not relieve your organization of the responsibility to provide effective risk management. You must still provide the family with the appropriate assignment, inform the family of inherent risks, and supervise and train family members for their respective roles.

Families that apply to serve your organization should not be allowed to bypass the normal screening process. Screen each individual family member and assess their suitability for their position. If you screen other adults, apply the same screening process to the adult members of the family. The mere fact that these adults come to you together with their children does not automatically mean that you should place them in contact with other children.

In addition, adult family members need to understand your organization's role in the care and supervision of their children. You must also be sure that the adults and young members of the family understand that, while performing service, all must abide by your organization's rules.

Parental involvement in family service can provide both benefit and detriment when it comes to controlling the activities of young people. When parents participate, they can shoulder a significant degree of the supervisory responsibilities. If you choose to take this approach you need to reach a clear understanding with the parents about their role in the care of their children. You must clarify your expectations as to the parents' liability in the event of an accident involving or caused by their child. Address these details in an agreement that both your organization and the parents sign prior to the commencement of service.



Many states have laws making parents financially responsible for the damages caused by their children. Most, if not all, of these statutes place arbitrary monetary limitations upon the damages the parents must pay. These limitations usually bear no relation to the actual damage caused. Kansas, for example, limits parental liability to $1,000 unless the act of the child was the result of parental neglect.[2] Some statutes condition liability upon whether the child was residing with or was under control of the parent at the time of the incident. Some states predicate the parents' responsibility upon the willful or malicious nature of the child's act. Under statutes of this nature, a parent will bear no financial responsibility for damages caused by the child's negligence or carelessness.

It may be possible, in your state, to draft an agreement by which parents agree to assume financial responsibilities that exceed those imposed by state law. Consult your organization's legal counsel for information on the legality of such agreements in your jurisdiction.

Although parents can help, they can also hinder. Adults can cause difficulties if they contradict your policies and countermand your instructions. Parents expect to be the authority figures for their children. Many will be uncomfortable in the role of subordinate to the staff members of your organization. They may find it difficult having their children witness their being given instruction and constructive criticism. On occasion, parents, thinking they have discovered "a better way" to implement a task, will direct their children to ignore your organization's instructions in favor of another method. To avoid such situations, you must set firm policies that discourage this behavior. If such a scenario presents itself, you will need to gain control quickly. Speak privately to the parent and have them work with you to reinstruct the child.

Endnotes

[1]Susan J. Ellis et al., Children as Volunteers (1991).

[2]Kan. Stat. Ann sec. 38-120 (1993).

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Conclusion

The foregoing materials have provided you with information concerning 1) risk relevant characteristics of children and adolescents, 2) legal principles that may govern your duty to and for your young participants, 3) a process for developing risk management strategies for working with young people, 4) techniques that are available to deal with laws and issues that are particularly relevant to young people, and 5) special strategies for working in service arrangements that commonly involve young volunteers. With this information, you should now be able to evaluate whether your organization is capable of making the type of risk management commitment necessary for working with young participants. If you cannot, discontinue the program or project and assure yourself that you are making the only decision that will preserve the health and safety of the young participants, the community, and your organization. If you feel you are capable of making the necessary commitment, keep the following quotation in mind.

One hundred years from now
it will not matter
—what my bank account was
—the sort of house I lived in
—or the kind of clothes I wore,
but the world may be much different
because I was important...
in the life of a child.[1]

Your importance in the lives of your young participants will rely greatly on your ability to protect them from harm as well as your ability to preserve the good name and resources of your organization. A commitment to risk management will enable you to continue to provide service opportunities to the young people of tomorrow. Make the commitment and enjoy the benefit to the young people, the community and your organization for a long time to come.

Endnotes

[1]Author unknown.

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Resource Organizations

The following organizations may be helpful in utilizing young people in service.

Community Partnership With Youth
2000 North Wells Street
Fort Wayne, Indiana 46808
(219) 422-6493

Energize, Inc.
5450 Wissahickon Avenue
Philadelphia, Pa 19144
(215) 438-8342

Points of Light Foundation
1737 H Street, NW
Washington, DC 20006
(202) 223-9186

Youth on Board
58 Day Street
P.O. Box 440322
Somerville, Mass 02144
(617) 623-9900

Youth Volunteer Corps of America
6310 Lamar Avenue
Suite 145
Overland Park, Kansas 66202-4247
(913) 432-9822

Resources from the Nonprofit Risk Management Center

Am I Covered for . . .?: A Guide to Insurance for Non-Profits (2d ed.), by Terry S. Chapman, Mary L. Lai & Elmer L. Steinbock, 1992, 285 pages, $15.00. The most complete and up-to-date handbook on insurance purchasing for nonprofits.

Avoiding a Crash Course: Auto Liability, Insurance and Safety for Nonprofits, 1995, 44 pages, $9.00. Auto accidents are one of the most frequent sources of insurance claims against nonprofits. This booklet can help you prevent traffic accidents. It also explains your potential liability, describes your insurance options, and provides post-accident procedures. Forms and checklists are included.

Child Abuse Prevention Primer for Your Organization, 1995, 88 pages, $12.00. To help you protect the young people you serve, the *Primer* offers suggestions based on the best practices in the field. Liability implications of abuse in youth-serving organizations receive special attention. Includes references for dozens of abuse-prevention books, videos and other tools.

D & O—Yes or No? 1992, 20 pages, $6.00. This booklet examines the major considerations for deciding whether to purchase directors and officers insurance and, if so, which policy to select.

Guidebook for Directors of Nonprofit Corporations, 1993, 118 pages, $19.95. A layperson's guide from the American Bar Association for every board that wants to protect itself from lawsuits.

Insurance Assurance for Volunteers, 1994, 16 pages, $5.00. This booklet explains insurance coverage for claims against and injuries to volunteers (as distinct from insurance for claims against the organization for volunteers' actions).

Kidding Around? Be Serious! A Commitment to Safe Service Opportunities for Young People. Additional copies cost $15.00.

Managing Legal Liability and Insurance for Corporate Volunteer Programs, 1992, 30 pages, $10.00. This book provides the guidance on liability and insurance corporations need when they become involved with volunteer programs.

No Surprises: Controlling Risks in Volunteer Programs, 1993, 60 pages, $9.95. This practical handbook offers strategies for protecting the organization, its staff, and the community it serves from injuries, lawsuits, and other unpleasant surprises.

Staff Screening Tool Kit: Keeping the Bad Apples Out of Your Organization, 1994, 116 pages, $15.00. Step-by-step guidance and sample forms for screening applicants to work with children and other vulnerable populations, to handle money, or to fill any sensitive positions.

State Liability Laws for Charitable Organizations and Volunteers, 1993 with 1995 update, 48 pages, $12.50. A state-by-state compilation of volunteer protection laws and limitations on the liability of charitable organizations.

Quantity discounts available.

To order, please include $3.00 shipping and handling for the first item plus $.50 for each additional item, $6.00 maximum. Send order and payment or purchase order to:

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